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**IN THE SUPREME COURT OF FLORIDA**

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**CASE NO.: SC2018-149**

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**THE FLORIDA BAR,**

**Petitioner,**

**vs.**

**TIKD SERVICES, LLC and CHRISTOPHER RILEY,**

**Respondents.**

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On Review of the Report of Referee and Recommended Judgment,  
The Florida Bar File Nos. 20174035(11B) and 20174045(11B)

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**BRIEF *AMICI CURIAE* OF GOLD & ASSOCIATES, P.A. D/B/A THE  
TICKET CLINIC, JOSEPH LORUSSO, P.A., THE LAW OFFICES OF LOU  
ARSLANIAN, STEVEN BELL, ESQ., AND THE LAW OFFICES OF H. A.  
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## **IDENTITY AND INTEREST OF THE *AMICI CURIAE***

*Amici curiae* submitting this brief (“Amici”) are: (1) Gold & Associates, P.A., d/b/a The Ticket Clinic, (2) Joseph LoRusso, P.A., (3) The Law Offices of Louis C. Arslanian, (4) Steven Bell, Esq., and (5) The Law Offices of H. A. Rodriguez, P.A. As lawyers and members of The Florida Bar, the Amici are required to comply with the Rules Regulating The Florida Bar (the “Bar Rules”). As such, Amici have a strong interest in the question of whether respondents TIKD Services, LLC and Christopher Riley (collectively, “TIKD”) are engaged in the unlicensed practice of law (“UPL”). Because TIKD does not have to comply with the Bar Rules, TIKD has an unfair competitive advantage over Florida lawyers and, more importantly, TIKD puts Florida consumers of legal services at risk. The January 24, 2019, Report of Referee and Recommended Judgment in this matter (the “Referee’s Report”) recommends that this Court find that TIKD is not engaged in UPL and that it dismiss all claims against TIKD. Amici support the Florida Bar’s Objection to the Report of Referee and urge the Court to reject the Referee’s Report and instead find that TIKD is engaged in UPL.

## **SUMMARY OF ARGUMENT**

It is beyond dispute that TIKD sells legal services to Florida consumers – namely, the defense of traffic tickets in court – and does so without complying with the Bar Rules. The likely result is injury both to consumers and to Florida

lawyers. For example, because TIKD's advertising is not compliant with the Bar Rules, it is rife with false and misleading statements. TIKD's promise to pay its clients' traffic ticket fines is contrary to the public good because it dis-incentivizes obeying Florida's traffic laws. TIKD plainly engages in fee splitting with its retained lawyers, in direct violation of the Bar Rules. And, TIKD imposes harsh and unfair limits on the remedies available to clients who utilize TIKD's services. This is harmful to consumers.

If TIKD's business model is permitted, it will constitute a profound – and profoundly troubling – transformation of the practice of law in Florida. *Anyone* will be able to hang up a shingle and sell legal services, even though he or she is not a member of The Florida Bar. *Anyone* will be able to advertise legal services in a misleading manner. *Anyone* will be able to split fees with attorneys, merely by following TIKD's payment model. In this new world, it will be permissible for legal services to be sold not just by non-lawyers, but also by suspended lawyers, disbarred lawyers, law school graduates who never passed the Bar Exam, pay-day loan companies, individuals with criminal records, and anyone else who desires to do so. As explained in greater detail below, TIKD is engaged in UPL, and its services put Florida lawyers and Florida legal-services consumers at risk. The Referee's Report should be rejected.

## **ARGUMENT**

### **I. TIKD Is Engaged In UPL.**

#### **A. The Only Thing TIKD Sells Is Legal Services.**

It is important to understand precisely what TIKD sells. TIKD maintains, and the Referee found, that 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.” Referee’s Report at 12. But this conclusion disregards the key fact that none of these “administrative and financial services” has any value outside of their connection to selling legal services – namely, the services of lawyers to defend traffic tickets in Florida.

Each of TIKD’s “services” identified in the Referee’s Report is an offshoot of providing legal services to defend traffic tickets. For example, TIKD provides the “service” of a website that permits drivers to upload an image of their traffic ticket. It provides the “service” of permitting drivers to pay TIKD in installments. And it provides the “service” of a financial guarantee. But these so-called services are useless in and of themselves. They qualify as services only inasmuch as they represent the means of contacting or paying for lawyers. If lawyers are removed from the equation, TIKD cannot, for instance, sell drivers a financial guarantee as to the ultimate cost of their tickets, because TIKD itself cannot defend those tickets. It can provide a financial guarantee only by selling legal services.



TIKD’s “services” are nothing more than add-ons to the legal services that are at the core of what TIKD sells consumers. A lawyer who hosts a website to which traffic tickets can be uploaded, or who permits clients to pay in installments, is still a lawyer selling legal services. The bells and whistles do not change the underlying fact that a practicing lawyer’s business is providing legal services, and therefore that lawyer must be a member of The Bar, which TIKD is not.

**B. Prior Case Law, And The Facts Concerning TIKD’s Business, Show That TIKD Is Engaged In UPL.**

As this Court has stated, and as the Referee recognized, “it is somewhat difficult to define exactly what constitutes the practice of law in all instances.” *The Fla. Bar v. Brumbaugh*, 355 So. 2d 1186, 1191 (Fla. 1978). Moreover, “any attempt to formulate a lasting, all-encompassing definition of ‘practice of law’ is doomed to failure for the reason that under our system of jurisprudence such practice must necessarily change with the everchanging business and social order.” *Id.* at 1191-92 (internal quotation omitted). In other words, this Court has warned that its prior decisions can provide guidance on whether a new business practice constitutes UPL, but the Court still must analyze each new business practice on its own facts.

The Referee’s Report appears to have overlooked this important warning, finding that “[n]one of the cases relied on by The Florida Bar establish that [TIKD is] engaged in UPL. Each case is distinguishable . . . .” Referee’s Report at 13.

Even if that conclusion was correct (and it is not), it fails to address TIKD's business on its own facts.

Just as critically, prior cases do show that TIKD is engaged in UPL. In *The Florida Bar v. Consolidated Business & Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980), for example, UPL was found where the respondent was:

a Florida corporation for profit, . . . 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.

*Id.* at 798 (quoting referee's recommendation). The business structure at issue in *Consolidated Business* is nearly identical to TIKD's business structure, although TIKD contracts with lawyers rather than employing them.

Several key facts about the respondent in *Consolidated Business* also are shared by TIKD, including that "the owners of [Consolidated Business] are prohibited by law from rendering the services which they offer to the public (F.S. 454.23) [and] are not competent by training to judge the quality of their product, [and] are not subject to the licensing authority which regulates the distribution of their product and [they] purport to exercise no ultimate control over their primary employees." *Id.* at 798. And "[t]here is no evidence that the respondent has made any attempt to balance the requirements of the Code of Professional Responsibility

against its profit motives nor that the owners have the training or ability to make such an evaluation.” *Id.* (quoting referee’s recommendation). Each of these facts is as true of TIKD as it was of the *Consolidated Business* respondent.

Similarly, in *The Florida Bar v. We The People Forms & Service Center of Sarasota, Inc.*, 883 So. 2d 1280 (Fla. 2004), this Court concluded that a company was engaged in UPL in numerous ways, including “hiring a licensed Florida attorney to provide legal advice to [its] customers.” *Id.* at 1282. Such conduct is nearly identical to that of TIKD. As set forth above, the services of lawyers are the only real services that TIKD sells its clients. Because prior case law supports a UPL finding in this matter, the Referee’s Report should be rejected.

**C. TIKD’s Business Actually Injures Consumers.**

The Referee’s Report accepts without question that TIKD’s business benefits consumers of legal services in Florida: “The undersigned finds 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.” Referee’s Report at 12. But the real world facts prove otherwise.

For instance, documents in public court files show that TIKD’s process for selecting lawyers results in injury to TIKD’s clients. In August 2017, for example,

TIKD sent an email to one of its lawyers, Eduardo Dieppa, listing the dispositions for several traffic infraction cases handled by Mr. Dieppa and stating:

Eddie,

What does this mean? D6<sup>1</sup> fail to pay? And late Fee?

Are you letting these cases fall under suspension by not paying the late fees?

I need clarification of what is going on with this as soon as possible.

This is causing People[']s licenses to be suspended.

*TIKD Services LLC v. The Fla. Bar, et al.*, Case No. 1:17-cv-24103-MGC (S.D. Fla.), D.E. 193-3, Exhibit to Christopher Riley Deposition Transcript (hereinafter “Riley Depo.”) at 335-337.<sup>2</sup>

Just over two weeks later, on August 30, TIKD personnel emailed among themselves, this time under the subject line “URGENT SUSPENSIONS,” stating:

order number 13555, Dieppa never paid the late fee even though he filed notice of appearance. Our client’s license is going to be suspended on the 6th of September. Dieppa needs to pay as soon as possible, I’m sure the client has already received a notice of pending suspension.

Order 13559, another Dieppa order – was \*suspended on 8/15\*  
Dieppa needs to fix these, I’m sure there will be more.

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<sup>1</sup> “D6” refers to a driver’s license suspension that occurs when a driver fails to resolve a pending traffic citation or file a plea as required by law.

<sup>2</sup> This Court may take judicial notice of records of “any court of record of the United States.” § 90.202(6), Fla. Stat.

*Id.* at 354. A week later, TIKD emailed Mr. Dieppa again, stating “Customer is hysterical about 13555. License is suspended today, did you get this taken care of as discussed yesterday?” *Id.* Later that same day, TIKD emailed Mr. Dieppa once more, stating: “This was supposed to be done yesterday, we are playing with these clients['] livelihood right now.” *Id.* at 351. These few pages of emails cast grave doubt on the proposition that TIKD is competent to oversee the business of handling clients’ traffic citations.

This Court has noted that if the performance of services “affect important rights of a person under the law,” and if reasonable protection of those rights requires “legal skill and knowledge of the law greater than that possessed by the average citizen,” then the performing of those services constitutes the practice of law. *The Fla. Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), *vacated on other grounds*, 373 U.S. 379 (1963). Here, the services that TIKD provides (or fails to provide) undoubtedly affect important rights (such as driving rights) and require skill greater than that possessed by the average citizen. When TIKD fails to provide those services properly, its clients’ important rights are negatively affected. Thus, TIKD is engaged in UPL.

## **II. TIKD Advertises Legal Services Without Complying With The Bar Rules.**

TIKD does not submit its advertisements to The Bar for legal review and does not otherwise comply with the Bar Rules. Not surprisingly, then, TIKD’s

advertisements are laden with false and misleading statements. TIKD advertises on radio, billboards, social media, and at Florida Marlins baseball games, but primarily through its website, [www.TIKD.com](http://www.TIKD.com), which provides the following comparison:

## WHY TIKD IS THE BETTER SOLUTION

 WITH TIKD	 WITHOUT TIKD
<ul style="list-style-type: none"><li>✓ Get all the benefits of a court challenge along with the convenience of simply paying your fine.</li><li>✓ Avoid points on your license and thousands in higher insurance costs.</li><li>✓ Get extra time to pay while avoiding late fees and other negative actions.</li><li>✓ No court, No phone calls, No hassle.</li><li>✓ Pay less than your fine on select tickets.</li><li>✓ Right from your phone in two minutes or less.</li></ul>	<ul style="list-style-type: none"><li>✗ Points on your license and increased insurance costs.</li><li>✗ Always pay the full amount.</li><li>✗ No ability to pay over time.</li><li>✗ Additional costs and hassle of hiring a lawyer.</li></ul>

*See* The Florida Bar’s Response to Respondent’s Motion for Summary Judgment & Bar’s Motion for Summary Judgment (“Bar’s MSJ”), Exh. 3A, at 1-2.

This series of comparisons is patently false. For instance, the website states that “WITH TIKD” the driver will “[a]void points on your license and thousands in higher insurance costs.” In reality, TIKD cannot guarantee that a driver will avoid points on his license, and therefore also cannot guarantee that the driver’s insurance rates will not increase. *See* Riley Depo., D.E. 193-3 at 306:17-19. This

type of false and misleading statement would not be permitted if TIKD's website were reviewed by The Bar.

TIKD's website further states that "WITH TIKD," a driver can take care of his ticket "[r]ight from your phone in two minutes or less." This is false. As the Referee noted, there are numerous steps involved in engaging TIKD. *See* Referee's Report at 6-8. These steps do not happen in two minutes or less; in fact, TIKD has testified that they typically take "a day or two." *See* Riley Depo., D.E. 193-3 at 254:13-25. Moreover, even after TIKD accepts a ticket, the driver may receive points or be required to attend traffic school, but the driver won't know that outcome for weeks or months. TIKD does not resolve matters in two minutes or less.

TIKD does not pay the cost of attending traffic school. *Id.* at 243:8-19. Thus, inasmuch as TIKD has attempted to convince ticketed drivers (and the Referee) that drivers will *never* pay anything more than what they pay TIKD, TIKD is misstating the facts. A driver using TIKD might never be required *to pay TIKD anything more*, but may have to pay for traffic school and increased insurance premiums. TIKD's advertising misrepresents these facts.

TIKD's website falsely states that "WITHOUT TIKD," a driver will receive "[p]oints on your license and increased insurance costs." In reality, clients who

retain attorneys to defend their tickets (without using TIKD) frequently avoid points and avoid increased insurance costs. *Id.* at 314:17-23.

Likewise, TIKD's website falsely states that drivers who don't use TIKD "[a]lways pay the full amount." In fact, drivers who hire a lawyer without using TIKD frequently avoid paying any fine whatsoever. *Id.* at 315:8-316:2. The Ticket Clinic has represented untold numbers of Florida drivers whose tickets were dismissed, who were assessed no fine, and whose attorney fees to The Ticket Clinic were less than the face-value "full amount" of their traffic tickets.

TIKD's website also falsely states that "WITHOUT TIKD" drivers will face the "[a]dditional costs and hassle of hiring a lawyer," but many drivers who hire a lawyer directly will pay *less* than they would pay if they used TIKD. *Id.* at 317:15-25. Where TIKD typically charges a driver 80% of the face value of his or her ticket (if not more), The Ticket Clinic regularly defends ticketed drivers for far less than 80% of the ticket's face value, and frequently obtains a dismissal of the ticket, with no fine assessed. *Id.*; *see also id.* at D.E. 193-6, Ted Hollander Deposition Transcript, at 189:16-190:24.

The primary purpose of regulating lawyer advertising is to protect the consuming public. That purpose is undercut if TIKD is permitted to sell legal services without complying with the Bar Rules. But allowing TIKD to operate as it does also injures Florida lawyers. For example, Florida lawyers submit their



advertisements to The Bar and have those advertisements reviewed for truthfulness. R. Reg. Fla. Bar 4-7.19. After such review, Florida lawyers often must revise their advertisements by changing wording or by providing additional disclosures. These revisions can impose costs and delays that are not borne by TIKD, placing Florida lawyers at an unfair competitive disadvantage.

### **III. By Paying Drivers' Fines, TIKD Dis-Incentivizes Drivers From Obeying The Law.**

#### **A. Florida Lawyers Are Not Permitted To Pay Their Clients' Fines.**

The Florida Offer of Judgment statute, § 768.79, Fla. Stat., shifts the burden of paying attorneys' fees to a party who does not "act reasonably and in good faith in settling lawsuits." *Goode v. Udhawani*, 648 So. 2d 247, 248 (Fla. 4th DCA 1995). To advance the goal of settling lawsuits reasonably and in good faith, the Offer of Judgment statute mandates that a litigant who acts unreasonably is responsible for his opponent's attorneys' fees. Because the statute provides an incentive for *litigants* to act reasonably, a Florida lawyer is prohibited from paying attorneys' fees imposed by the statute upon such a litigant. "[T]he deterrent effect of the Offer of Judgment statute would be defeated if lawyers could insulate their clients from potential financial liability" by paying their fines. Fla. Bar Ethics Op. 96-3 at 2 (Feb. 15, 1997).

The same reasoning applies with respect to civil traffic fines, which serve a deterrent effect by imposing a financial penalty that discourages *drivers* from

violating the law. *See, e.g., State v. Jackson*, 417 So. 2d 1097, 1098 (Fla. 4th DCA 1982) (statute providing civil penalty for moving violations “rests upon a real and practical basis in promoting highway safety”); *State v. Garner*, 402 So. 2d 1333, 1335 (Fla. 2d DCA 1981) (increased civil penalty “would create a circumstance where fewer persons would speed in excess of 65 mph”). But the deterrent effect of the traffic laws would be defeated if TIKD could insulate its clients from potential financial liability by agreeing to pay their fines, even if the fine exceeds the amount the client has paid TIKD. And that is precisely what TIKD does: TIKD “pays any fine or court costs imposed *against the driver* if the ticket is not dismissed.” *See* Bar’s MSJ, Exh. 1, Affidavit of Christopher Riley, ¶ 7 (emphasis added). If TIKD’s business model is permitted to stand, it will achieve indirectly what Florida lawyers are prohibited from achieving directly and will disincentivize compliance with the law. This Court should not permit that to happen.

**B. TIKD’s Business Model Will Likely Be Replicated In Other Practice Areas.**

If TIKD’s business model is approved, other non-lawyer companies will find similar ways to sell other legal services to Florida in the same manner TIKD does. It is not possible, of course, to know the specific practice areas in which companies like TIKD will begin to sell legal services; but it is easy to envision them. For example, a new company might utilize Florida tax attorneys and call itself TAXD. Like TIKD, TAXD might guarantee its clients that, once its affiliated attorneys

have reviewed and provided legal advice on the client's taxes, TAXD will guarantee the maximum amount of the client's tax liability or that the client will not face any penalty from the IRS. If, however, the tax liability is higher than the guarantee, or the IRS imposes a penalty, TAXD will pay it.

Similarly, it is easy to imagine a company like TIKD that utilizes family law attorneys. Such a company, perhaps called KIDZ, might promise that in connection with a marital dissolution, KIDZ will guarantee that the amount of child support to be paid will be no more than a specified amount, but if the court orders a higher amount, KIDZ will pay the difference.

Of equal concern, these companies could engage in the sort of deceptive advertising that TIKD utilizes. TAXD's website, for instance, might inform potential clients that they can "take care of their tax dispute in less than ten minutes," by uploading the necessary paperwork, even though such a statement plainly is not true. KIDZ's website might warn potential clients that if they don't use KIDZ's services, they will face the "additional cost and hassle" of hiring a lawyer directly, even though doing so might be less costly and might provide untold benefits that the client cannot foresee.

TIKD's business represents the tip of the iceberg in terms of permitting non-lawyers to sell legal services in Florida. But TIKD's business is, in reality, UPL.

As a result, the Court should prevent TIKD and its likely followers from practicing law in Florida without a license.

#### **IV. TIKD And Its Lawyers Engage In Improper Fee Splitting.**

“A lawyer or law firm shall not share legal fees with a nonlawyer.” R. Reg. Fla. Bar 4-5.4(a). Nevertheless, TIKD splits fees with the lawyers it retains to represent drivers in traffic court. As TIKD’s own website informs customers, “[a] portion of what you pay TIKD will go directly to your lawyer.” Bar’s MSJ, Exh. 3A, at 13. Thus, lawyers who work with TIKD are violating the Bar Rules.

TIKD apparently takes the position that it is not engaged in fee-splitting with lawyers because its clients make their payments *to TIKD*, and TIKD then pays a portion of that money to the lawyer. In TIKD’s view, a violation of Rule 4-5.4(a) would occur only if the clients paid money directly *to lawyers*, and those lawyers then paid a portion of that money to TIKD. This, of course, makes no sense. If a client pays \$160 to TIKD to “handle” a \$200 traffic ticket, and TIKD pays \$25 to a lawyer to represent the client in connection with that ticket,<sup>3</sup> TIKD ends up with \$135. If, on the other hand, the client were to pay the \$160 directly to the lawyer, and the lawyer paid \$135 to TIKD, everyone would end up in the same position with the same amount of money. There is no rational reason why paying TIKD

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<sup>3</sup> See, e.g., Riley Depo., D.E. 193-3 at 243:24-244:21 (acknowledging that some lawyers retained by TIKD are paid between \$15 and \$30 per ticket they defend); *id.*, D.E. 187-3, at 9 (contract under which TIKD paid lawyer from \$20 to \$30 per ticket defended).

first rather than second renders the transaction proper under Rule 4-5.4(a), which makes no distinction with respect to the direction in which fees are paid.

The Bar Rules prohibit fee-splitting in order to “protect the lawyer’s professional independence of judgment.” R. Reg. Fla. Bar 4-5.4(a), cmt. But lawyers representing clients on behalf of TIKD necessarily serve two masters: the client and TIKD. Since TIKD agrees to pay any fines imposed upon its clients, and TIKD seeks to make money, TIKD’s goal is to have all tickets dismissed. But there are situations in which TIKD’s clients might benefit by agreeing to pay a fine. Suppose, for example, a prosecutor offers to withhold adjudication on a ticket in exchange for the driver paying the face value of the ticket plus court costs. For many drivers, receiving no points and avoiding increased insurance premiums would be an optimal outcome, but not for TIKD. Knowing this, and hoping to get future work from TIKD, lawyers representing TIKD clients have an economic incentive to fight the ticket, hoping for a dismissal. But if the lawyer fails, the driver will end up in a worse situation, with points on his license and increased insurance premiums. This conflict of interest is inherent in TIKD’s business model and undercuts its lawyers’ exercise of independent judgment.

**V. Clients’ Remedies Against TIKD Are Severely Limited.**

Clients who believe they have been injured or wronged in some manner by TIKD (or by the attorney retained by TIKD) are deprived of an important remedy:

because TIKD is not governed by the Bar Rules, a client cannot initiate disciplinary proceedings against it. In theory, of course, if a lawyer retained by TIKD fails to appear for a hearing or commits some other form of malpractice, the client may file a Bar grievance against that lawyer. But TIKD – which advertises the services, selects the tickets for representation, sets up the relationship with the lawyer, and earns the most revenue from the transaction – is outside of the jurisdiction of this grievance system. *See* R. Reg. Fla. Bar 3-3 (recognizing the Florida Supreme Court’s “exclusive jurisdiction . . . over the discipline of persons admitted to the practice of law”). Because TIKD is not subject to the Rules, the disciplinary measures available under the Rules – including probation, public reprimand, suspension, disbarment, forfeiture of fees, and restitution – are not applicable to TIKD. *See id.* 3-5.1(c), (d), (e), (f), (i) & (j). These disciplinary rules are intended to protect the public from unethical conduct without being unduly harsh to the attorney. *The Fla. Bar v. Dupee*, 160 So. 3d 838, 853 (Fla. 2015). But in the case of TIKD, this important public interest is not served.

Moreover, TIKD’s contracts with drivers place additional and significant limits on their rights and remedies. Drivers who utilize TIKD agree to TIKD’s Terms of Service. *See* Bar’s MSJ, Exh. 1A (Terms of Service). The Terms of Service are written in difficult-to-understand legalese, and provide definitions that

are so complex as to be nearly incomprehensible. For example, the Terms of Service define “TIKD Properties,” among other things, as follows:

This Agreement is between you and TIKD SERVICES LLC (“TIKD”, “Company” or “we” or “us”) concerning your use of (including any access to) the TIKD products and services, which include the TIKD website currently located at [www.TIKD.com](http://www.TIKD.com) (together with any materials and services available therein, and successor site(s) thereto, the “Site”), and the TIKD mobile software application made available by us for use on or through mobile devices (together with any materials and services available therein, and successor application(s) thereto, the “App”) and other TIKD branded products and services (collectively, the “TIKD Properties”). This Agreement hereby incorporates by this reference any additional terms and conditions posted by Company on or through the TIKD Properties, or otherwise made available to you by Company.

The Bar’s MSJ, Exh. 1A (Terms of Service), at 1.

It is far from clear what this language means, and it certainly would not be clear to the typical consumer. But “TIKD Properties” is an important term because, among other things, the Terms of Service disclaim all warranties relating to the TIKD Properties. *Id.* at 6, ¶ 12. If the term “TIKD Properties” includes the provision of legal services to defend traffic tickets (which it likely does), then TIKD is disclaiming *all warranties about its services*. It is unlikely that any clients realize or intend this outcome when they engage TIKD.

But more than being confusing, many other provisions of TIKD’s Terms of Service severely limit or wholly eliminate client rights. For instance:

- Drivers give up their right to sue TIKD in court because the Terms of Service contain a *mandatory arbitration provision*. See Bar’s MSJ,

Exh. 1A (Terms of Service), at 8, ¶ 16. Despite containing a mandatory arbitration provision, the Terms of Service do not contain the notice language required in lawyer retainer agreements containing a mandatory arbitration provision. *See* R. Reg. Fla. Bar 4-1.5(i).

- The monetary remedies available to drivers are almost nonexistent because TIKD’s total liability to its clients is limited to the *lesser of \$100 or the total amount paid to TIKD*. Bar’s MSJ,9 Exh. 1A (Terms of Service), at 7, ¶ 13.
- Drivers are required to *indemnify TIKD* for any claims or damages arising from the driver’s “use of, or activities in connection with, the TIKD Properties.” *Id.* at 7, ¶ 14.
- Drivers who utilize TIKD are required to *waive their right to bring a class action* lawsuit against TIKD. *Id.* at 8, ¶16.
- And, incredibly, the statute of limitations for any potential claim against TIKD is shortened to *six months* under the Terms of Service. *Id.* at 8, ¶ 18.

Once again, through its Terms of Service, TIKD seeks to do precisely what Florida lawyers are (rightly) prohibited from doing. TIKD is selling legal services to Florida consumers while skirting the Bar Rules intended to protect consumers. TIKD is engaged in UPL.

**VI. If Permitted, TIKD’s Business Model Will Dramatically—And Negatively—Transform The Way Legal Services Are Provided And Regulated In Florida.**

Condoning TIKD’s method of selling legal services will likely open the floodgates to many other non-lawyer companies selling legal services to Florida consumers, without the protections afforded by the Bar Rules. This would constitute a major change in the way this Court oversees the practice of law. By



redirecting client payments through a website or app, and then on to a lawyer, non-lawyer companies will be able to flout the Bar Rules, propound misleading advertising, deprive clients of important rights, and otherwise engage in the unlicensed practice of law.

Today, these regrettable practices are directed only at drivers who have received civil traffic citations, and the competing lawyers who represent such drivers; but in the future, the variety of consumers and the areas of practice affected will be essentially without limit, from family law to bankruptcy to landlord/tenant to personal injury to foreclosures to trusts and estates and more. From the perspective of seeking to prohibit UPL, TIKD's business model represents a slippery slope, because if this Court finds that TIKD is not engaged in UPL, then the hypothetical examples described above – TAXD and KIDZ and many more – will become a reality in Florida. That should not be permitted to happen.

### **CONCLUSION**

WHEREFORE, Amici respectfully urge the Court to reject the Referee's Report and hold that TIKD is engaged in the unlicensed practice of law.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Florida Courts E-Filing Portal and has been served by e-mail to all parties of record this 7<sup>th</sup> day of March, 2019.

By: /s/ James J. McGuire

Attorney

**CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210**

Undersigned counsel hereby certifies that this brief *amici curiae* is typed in 14-point (proportionately spaced) Times New Roman and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

/s/ James J. McGuire

Attorney