

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Petitioner,

Supreme Court Case
No. SC2018-149

v.

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

TIKD SERVICES LLC,
A Foreign Limited Liability Company,

and

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

Respondents.

**REPORT OF REFEREE
AND RECOMMENDED JUDGMENT**

SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct proceedings herein according to Rule 10-7.1, Rules Regulating The Florida Bar, the following proceedings occurred:

On January 23, 2018, The Florida Bar filed a Petition against Respondents TIKD Services LLC (“TIKD”) and Christopher Riley (“Riley”) for the Unlicensed Practice of Law. Count I of the Petition alleged that Respondents advertise in a fashion which may lead a reasonable lay person to believe they are qualified to offer legal services to the public. Count II of the Petition alleged that Respondents engage in the business of offering traffic ticket legal services through members of The Florida Bar, and that such actions “violate the letter and spirit” of the Florida Supreme Court’s decisions in *State of Florida ex rel. The Florida Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962); *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); *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978); *The Florida Bar v. Neiman*, 816 So. 2d 587 (Fla. 2002); and *The Florida Bar v. Warren*, 655 So. 2d 1131 (Fla. 1995). The Petition seeks a ruling that Respondents’ conduct constitutes the unlicensed practice of law (“UPL”) and enjoin the Respondents from engaging in the acts complained of “until such time as Respondent Riley is duly licensed to practice law in this state.”

On January 30, 2018, the Clerk of the Florida Supreme Court issued an order requiring Respondents to answer to 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 their Answer, denying that they were engaged in UPL, describing the factual nature of TIKD's services, and distinguishing each of the cases cited in the Petition.

On April 9, 2018, Respondents filed a Motion for Summary Judgment pursuant to Rule 10-7.1(b)(5) & (6) of the Rules Regulating the Florida Bar. Respondents contended that the undisputed facts showed they were not engaged in UPL. Respondents supported their motion with two exhibits: (1) the Affidavit of Christopher Riley and (2) TIKD's Terms of Service.

On April 20, 2018, The Florida Bar filed a Motion for Judgment on the Pleadings pursuant to Rule 10-7.1 of the Rules Regulating the Florida Bar. The Florida Bar noted that the pleadings were closed and contended that the undisputed material facts supported its allegation of UPL. The motion relied primarily on *Florida Bar v. Consolidated Business & Legal Forms, Inc.* ("Consolidated Business") and *Florida Bar v. We The People Forms & Service Center of Sarasota, Inc.* ("We The People").

On April 20, 2018, The Florida Bar moved for the appointment of a referee pursuant to Rule 10-7.1(6) of the Rules Regulating the Florida Bar "to preside in this matter, make findings of fact and rulings of law, and render a report and recommendation."

On April 30, 2018, Respondents filed their response to The Florida Bar's Motion for Judgment on the Pleadings, distinguishing *Consolidated Business* and *We The People*.

On June 4, 2018, The Florida Bar responded to Respondents' Motion for Summary Judgment and sought summary judgment in its favor, asserting that there was no conflict in the evidence. The Florida Bar's motion was supported by four exhibits, two of which Respondents had also filed in support of their Motion for Summary Judgment: (1) the Affidavit of Christopher Riley; (2) the TIKD Terms of Service; (3) excerpts from Christopher Riley's deposition; and (4) excerpts from TIKD's website as of May 14, 2018. The Florida Bar continued to rely primarily on *Consolidated Business* and *We The People* to support its allegation of UPL.

On June 14, 2018, Respondents filed a response to The Florida Bar's Motion For Summary Judgment. On July 13, 2018, the Florida Supreme Court appointed the undersigned via the Chief Judge in and for the Eleventh Judicial Circuit, as Referee for the Florida Supreme Court in this matter.

The Referee set a status conference for the parties' Motions for Summary Judgment for September 26, 2018, which was later continued, on the Referee's motion, to December 11, 2018. The status conference was held. Algeisa M. Vazquez appeared on behalf of The Florida Bar. Ramon A. Abadin and Robert J. Kuntz, Jr., appeared on behalf of Respondents. At the status conference, the

Referee granted Respondents' Motion for Summary Judgment and stated findings and holdings on the record and indicated that a written Report of Referee would be prepared.

At the Referee's request, unopposed by the parties, the Florida Supreme Court extended the time to file the Report of Referee until January 25, 2019.

All of the pleadings, motions, exhibits and orders, the transcripts of the related hearings, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

FINDINGS OF FACT

The following findings of fact are based on the evidence submitted by the parties identified above:

Respondent TIKD Services LLC ("TIKD") was founded in 2016 by Respondent Christopher Riley, its CEO. Riley Aff. ¶ 1. Riley is a graduate of the U.S. Naval Academy and Harvard Business School. It is undisputed that 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.

It is also undisputed that Respondent TIKD is a Foreign Limited Liability Company whose principal place of business is Coral Gables, Florida and was not

and is not a law firm and was not and is not authorized to practice law in Florida. Respondent TIKD is not a lawyer referral service.

TIKD owns and operates a website at <http://www.tikd.com>. Riley Aff. ¶ 4. TIKD began offering its services to the public in December 2016. *Id.* As of April 2018, TIKD was offering its services in four Florida counties and in four other states. *Id.* TIKD provides a technology platform and financial guarantee for drivers who have received a traffic ticket. *Id.* ¶ 5.

In those jurisdictions where TIKD provides services, a person who has received a traffic ticket can request TIKD's services by uploading a picture of the ticket and creating an account. Riley Aff. ¶ 5. TIKD then performs an internal analysis on the uploaded ticket, not disclosed to the driver, before agreeing to provide its services to the driver. *Id.* ¶ 6. In the process of deciding whether to accept a ticket, TIKD does not give the driver any legal advice or tell the driver about available defenses or the likelihood of a fine. *Id.*

If TIKD declines the ticket, it notifies the driver and the driver is not charged. Riley Aff. ¶ 7. If TIKD accepts the ticket, the driver is charged a percentage of the face amount of the ticket. *Id.* The customer can make a one-time payment or pay in monthly installments. *Id.* The driver makes no other payments. *Id.*

In exchange for the one-time charge to the driver, TIKD (1) pays an independent licensed Florida attorney who contracts separately with the driver and defends the driver's ticket in court; (2) pays any fine and/or court costs imposed against the driver, if the ticket is not dismissed; and (3) provides the driver a full refund if any "points" are issued against the driver's license, while still paying any court costs and/or fines. Riley Aff. ¶ 8; State Bar MSJ Ex. 2 ("Riley Depo.") at 14:19-15:18. TIKD does not guarantee any outcome. Specifically, TIKD does not guarantee that a ticket will be dismissed or that drivers will not receive points on their licenses. *Id.* ¶ 9.

TIKD does not give legal advice or provide legal representation to ticketed drivers. Riley Aff. ¶ 10. All legal representation and advice is provided by licensed Florida attorneys who do ticket defense in their private practice and who are not employed or controlled by TIKD. *Id.* On behalf of the ticketed driver, TIKD pays the lawyers a flat fee per ticket defended, regardless of outcome, and TIKD does not receive any fees, payments, or other compensation from these independent lawyers. Ex. 1 ¶ 18; Riley Depo. at 14:4-17.

After accepting a ticket, TIKD contacts a licensed Florida attorney and provides the driver's contact and ticket information. *Id.*; Riley Aff. Ex. 1A ¶ 6. The attorney is then free to accept or decline the representation. Riley Aff. ¶ 13. If the attorney declines, TIKD may send the customer information to another

independent attorney. *Id.* If no attorney accepts, TIKD notifies the customer and provides a full refund. *Id.*

If the attorney accepts the representation, the attorney contacts the driver directly and provides a representation letter drafted by the attorney. Riley Aff. ¶ 14. The driver is free to decline the attorney's representation for any reason. *Id.* If the driver declines, TIKD provides a full refund. *Id.*; Riley Aff. Ex. 1A ¶ 6; Riley Depo. at 21:16-23.

If both the attorney and the driver agree to the attorney's representation of the driver, they enter into an *independent contractual attorney client relationship* based on the attorney's representation letter. Riley Aff. ¶ 15. The attorney then works and communicates directly with the driver regarding the traffic ticket defense. *Id.* Drivers communicate directly and confidentially with their attorneys, not through TIKD. *Id.* TIKD does not control how the legal services are rendered, and TIKD is not involved in the attorney's defense of the ticket. Riley Aff. ¶ 16. The independent attorney handles all aspects of the ticket defense. Riley Aff. ¶ 17.

If the ticket is dismissed, the customer's attorney-client relationship ends, the customer gets no refund, and TIKD has no further obligation. *Id.* If a fine is assessed, TIKD pays the fine, regardless of whether it is more or less than the amount TIKD charged the customer. *Id.* If any driving points are assessed, the customer is also entitled to a full refund of TIKD's charge. *Id.*

When a driver creates an account with TIKD, the driver must affirmatively assent to TIKD's Terms of Service before TIKD receives any payment. Riley Aff.

¶ 10. TIKD's Terms of Service are available on its website. *Id.* Under the Terms of Service, when a driver submits a ticket to TIKD, and TIKD agrees to provide its services, the customer authorizes TIKD to pay an independent, licensed attorney to represent the customer with regard to that ticket. *Id.* ¶ 10. TIKD's Terms of Service provide:

7. Representation. By using the TIKD Properties and purchasing the Services, you authorize us to hire an independent licensed attorney on your behalf to represent you on all matters concerning the license plate number and traffic ticket number submitted by you with the TIKD Properties and to make payments to such independent licensed attorney on your behalf.

Riley Aff. Ex. 1A ¶ 7.

TIKD's Terms of Service state that TIKD is “**not an attorney and does not provide any legal advice**” and include this disclaimer:

3. Provision of Services. The TIKD Properties provide a service made available by Company designed to help users challenge their traffic violation tickets by hiring independent attorneys on users' behalf to represent users in challenging traffic violation tickets (the “Services”). **TIKD IS NOT A LAW FIRM, WE ARE NOT ATTORNEYS AND WE DO NOT DISPENSE LEGAL ADVICE NOR SHOULD YOU CONSIDER PROVISION OR RECEIPT OF THE SERVICES AS SUCH. ALL LEGAL MATTERS ARE HANDLED BY INDEPENDENT LICENSED ATTORNEYS HIRED ON YOUR BEHALF. TIKD WILL NOT PROVIDE YOU WITH ANY LEGAL ADVICE OR DISCUSS THE LEGAL ASPECTS OF THE CASE WITH YOU.**

Riley Aff. Ex. 1A (emphasis in original).

TIKD's website contains a Frequently Asked Questions ("FAQ") section. State Bar Ex. 3A. Within the FAQ, TIKD provides the following questions and answers about its service:

Why should I choose to use TIKD?

TIKD provides a simple, cost-effective option for you to take action on your traffic ticket. Remember, we are not a law firm and we do not provide legal advice. We're number crunchers and technology lovers and we're here to offer you a new way to handle your traffic ticket.

Can't I hire a lawyer to do the same thing for me?

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. . . .

Can I talk to the lawyer who will handle my case?

Absolutely. Your lawyer is YOUR lawyer. Once we have reviewed and verified your traffic ticket you will be provided with your lawyer's contact information. You can contact your lawyer directly whenever you want. No coordination with TIKD is required and TIKD does not participate in your relationship with your lawyer.

Do I have to pay my lawyer separately?

No. A portion of what you pay to TIKD will go directly to your lawyer. The amount you pay to TIKD is all you will ever have to pay.

It is undisputed that TIKD is not a lawyer referral service. *See* Petition ¶ 3;

Answer ¶ 3; Riley Depo. 52:4-7.

The Florida Bar did not allege nor was any evidence submitted that TIKD has given any customer or customers legal advice about their tickets or their cases; that TIKD's customers believed Respondent TIKD was a law firm or that Respondent Christopher Riley was an attorney; that Respondents directed or interfered with the attorneys' legal advice and representation of the ticketed drivers; that Respondents participated in the attorney-client relationship or attorney-client communications between the ticketed drivers and the attorneys; or that any TIKD customer was harmed by TIKD's services.

CONCLUSIONS OF LAW

The Florida Supreme Court has not promulgated a comprehensive definition of "the practice of law," concluding that "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.'" *Fla. Bar v. Brumbaugh*, 355 So. 2d 1186, 1191-92 (Fla. 1978). The purpose of prohibiting UPL is "to protect the consuming public from being advised and represented in legal matters by unqualified persons who may put the consuming public's interests at risk." *Fla. Bar v. Neiman*, 816 So. 2d 587, 597 (Fla. 2002). This is "the single most important concern in the

Court's defining and regulating the practice of law." *Fla. Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980).

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.

Based on a careful review of the evidence submitted by Petitioner and Respondents and the applicable case law from the Florida Supreme Court, the Referee finds that TIKD is not engaged in the unlicensed practice of law and does not advertise in a way that would lead a reasonable person to believe that Respondents are offering legal services to the public.

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).

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.(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.

None of the cases relied on by The Florida Bar establish that Respondents are engaged in UPL. Each is distinguishable because, unlike 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.

The Florida Bar relies most heavily on two cases, *Consolidated Business* and *We The People*. *Consolidated Business* involved a for-profit corporation, run by non-lawyers, that directly employed Florida lawyers full-time to provide legal services and extensively controlled the details of how the lawyers delivered those services. (386 So. 2d at 798-800.) The referee found that the corporation, among other things, (1) established rules and policies governing fees, limiting the amount

of permissible attorney conference time with clients, and requiring the use of specific legal forms; (2) had access to clients' files; (3) employed legal secretaries with access to clients' files; (4) directed and controlled the legal secretaries' work; (5) terminated lawyers without regard to transfer of client files; (6) assigned new lawyers to take over client files; (7) asserted a proprietary interest in the clients' case files; (8) and managed specific client cases in a profit-oriented manner that resulted in client injury and/or inadequate representation. *Id.* at 799-800. Here, TIKD's involvement ends at identifying an appropriate attorney to represent the TIKD customer. Significantly, the customer has the option of declining representation by that particular attorney.

We The People involved a for-profit corporation, again owned and operated by non-lawyers, that (1) advertised and performed legal document preparation services extending far beyond selling blank forms and typing services; and (2) directly employed and controlled an attorney who gave legal advice to its customers. Here, each TIKD customer is provided an individual attorney who provides representation based on the particular facts. The attorney, not TIKD, prepares and handles all the motions and pleadings necessary to represent the client.

There is therefore no evidence that TIKD engages in any of the activities found to constitute UPL in *Consolidated Business* or *We The People*. TIKD does

not provide legal advice or representation. TIKD does not have lawyer-employees. TIKD's customers, at their option, enter into direct, confidential attorney-client relationships with independent, licensed Florida attorneys. TIKD does not control or influence the lawyers' representation of their clients or participate in the attorney-client relationship or attorney-client communications in any way.

Nor do the other four cases cited by The Florida Bar in its Petition establish that TIKD is engaged in UPL. *Sperry*, *Warren*, *Neiman*, and *Brumbaugh* all involved non-lawyers affirmatively holding themselves out as lawyers and/or rendering actual legal services, such as representing persons in contested matters, rendering legal opinions, settling cases or preparing legal documents. *See Sperry*, (140 So. 2d at 588) (non-lawyer held himself out as "Patent Attorney" and represented persons in patent prosecutions); *Warren*, (655 So. 2d at 1132-33) (non-lawyer represented persons in litigation and collected fees under the guise of being a lawyer); *Neiman*, 816 So. 2d at 588) (paralegal negotiated personal injury settlements); *Brumbaugh*, (355 So. 2d at 1189) (paralegal prepared legal documents for divorce proceeding).

In each of the cases cited by The Florida Bar, the public was in danger of being advised and represented in legal matters by unqualified, unlicensed persons. In contrast, in this case the legal advice and representation is provided by independent, licensed attorneys. There is no evidence that TIKD engaged in any of

the activities held to be the practice of law in *Consolidated Business, We The People, Sperry, Warren, Neiman, and Brumbaugh*. Respondents do not hold themselves out to be a law firm or a lawyer, go to court, argue the merits of cases, negotiate settlements, render legal opinions, draft legal documents or control the legal work of attorneys. The independent lawyers, retained by the ticketed drivers, do all of the pleadings, legal work, and motions necessary to handle the clients tickets.

The Florida Bar seems to suggest that the web site is deceptive and misleading and would lead a reasonable person to believe that TIKD is a law firm. 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.

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.

RECOMMENDED JUDGMENT

Based on the above Findings of Fact and Conclusions of Law, the Referee recommends that the Supreme Court of Florida dismiss all claims alleged against Respondents with prejudice, enter judgment in favor of Respondents.

Dated this 24 day of January, 2019.

/s/
Teresa Pooler, Circuit Judge/Referee
Eleventh Judicial Circuit