

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

Case No.: SC18-149

v.

Fl. Bar File Nos.: 20174035(11B)

TIKD SERVICES LLC and
CHRISTOPHER RILEY,

and 20174045(11B)

Respondents.

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NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioner, THE FLORIDA BAR, submits as supplemental authority pursuant to Fla. R. App. P. 9.225, the attached authority (Exhibit A), which is a joint opinion of the New Jersey Committee on the Unauthorized Practice of Law and the Advisory Opinion on Professional Ethics. It addresses the unauthorized practice of law by a similar traffic ticket company and a lawyer’s duty not to assist the company in the unauthorized practice of law. This decision is persuasive, but not binding on this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2021, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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EXHIBIT A

Issued by the Committee on the Unauthorized Practice of Law
and the Advisory Committee on Professional Conduct
June 21, 2021

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey



JOINT OPINION

**Committee on the Unauthorized Practice of Law Opinion 58
Advisory Committee on Professional Ethics Opinion 740**

**Non-Legal Companies That Offer Legal Services
to Customers Engage in the Unauthorized
Practice of Law; Lawyers Who Provide Legal
Services to the Company's Customers Violate
the Rules of Professional Conduct**

The Committee on the Unauthorized Practice of Law (UPL Committee) considered a grievance about a company that offers legal services to customers to resolve their traffic ticket cases. Customers pay the company a flat fee and the company “matches” the user with a lawyer who will represent the customer in municipal court. The customer contracts for legal services with the company. Companies that are not law firms cannot provide legal services to customers of the companies, either through staff lawyers or by furnishing outside lawyers. UPL Opinion 25 (January 1992); Stack v. P.G. Garage, Inc., 7 N.J. 118 (1951); N.J. State Bar Ass'n v. Northern N.J. Mortgage Associates, 22 N.J. 184 (1956), modified 34 N.J. 301 (1961). The UPL Committee finds that the company is engaging in the unauthorized practice of law.

The Advisory Committee on Professional Ethics finds that lawyers who provide legal services to customers of such companies are assisting the company in the unauthorized practice of law, in violation of Rule of Professional Conduct 5.5(a)(2). If the lawyer receives the fee from the company, the lawyer is impermissibly fee-sharing in violation of Rule of Professional Conduct 5.4(a). Further, a lawyer who is recommended or paid by the company to furnish legal services to the company's customers violates Rule of Professional Conduct 7.3(e).

Committee on the Unauthorized Practice of Law Opinion 25 states that a company that offers legal representation for certain legal matters and refers the customer to a lawyer is engaging in the unauthorized practice of law. This is so even when the company expressly states that it does not engage in the practice of law but merely forwards the case to a lawyer, because the contract between the customer and the company is for the provision of legal services. With few exceptions not relevant here,¹ New Jersey companies that are not law firms are not permitted to engage in the practice of law. R. 1:21-1(c); In re Education Law Center, 86 N.J. 124, 129 (1981).

The Committee stated in Opinion 25:

The New Jersey Supreme Court has explicitly held that where an individual, who is not an attorney, contracts to procure reduction in real estate taxes which necessitates appeal to a county tax board, that individual is illegally engaging in the unauthorized practice of law. Stack v. P.G. Garage, Inc., 7 N.J. at 121. Specifically, the Court articulated that "[I]n agreeing to prosecute [an] appeal for the defendant, [the licensed realtor] was contracting to furnish legal services without being licensed to do so." Ibid. In N.J. State Bar Ass'n v. Northern N.J. Mortgage Associates, 22 N.J. 184 (1956), modified 34 N.J. 301 (1961), the Supreme Court reiterated this proposition, specifying exactly what relationship between a corporation and its own attorneys constitutes the unauthorized practice of law. "Corporations may act for themselves through their own attorney-employees, but they cannot perform acts for others in this capacity which amounts to the practice of law." Id. An organization that solicits homeowners to initiate tax appeals and engages an attorney in conjunction with such appeals, is impermissibly practicing law.

¹ For example, non-profit corporations that provide legal assistance to the poor, function as a public interest law firm, or provide legal assistance to persons of low and low-moderate means may practice law through staff attorneys, with restrictions. R. 1:21-1(e).

The business model of the company that is the subject of this joint opinion is similar to that of loan modification companies (UPL Opinion 45) and property tax appeal companies (UPL Opinion 25). Those companies also solicited clients and then referred the clients to independent lawyers who provided the clients legal services. This company is holding itself out as an entity that will furnish a lawyer for the company's client. While it calls the service a "matching" service, in reality the customers contract with the company for legal services and are referred to participating lawyers who provide those services. The company thereby engages in the unauthorized practice of law.

Lawyers may practice law only as part of a law firm or as in-house counsel. In-house counsel in a non-legal company may provide legal services only to their employer; they may not provide legal advice or legal services to customers of their employer. R. 1:27-2; R. 1:21-1; RPC 5.4(a) and (b); ACPE Joint Opinion 730/UPL Committee Joint Opinion 52 (2015); ACPE Joint Opinion 716/UPL Committee Joint Opinion 45 (2009).

The Advisory Committee on Professional Ethics joins this opinion to address the ethics issues that arise when lawyers offer their services to such companies. As noted above, the companies are engaging in the unauthorized practice of law. Lawyers may not assist a company or person in the unauthorized practice of law. RPC 5.5(a)(2).

Lawyers may not share legal fees with non-lawyers. RPC 5.4(a). In the matter before the UPL Committee, customers pay the company a flat fee and the company "matches" the customer with a lawyer. Presumably, the company pays the lawyer a portion of the fee it received from the customer. If a New Jersey lawyer accepts a fee for legal services from the company, the lawyer is impermissibly sharing fees with a layperson in violation of Rule of Professional Conduct 5.4(a). See Joint Opinion ACPE 716 / UPL 45 (June 2009) (lawyers who receive fees

from loan modification companies for legal services provided to homeowners violate RPC 5.4(a)).

Further, lawyers “shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer’s services” RPC 7.3(e). Lawyers may only be “recommended, employed or paid by or cooperat[e] with” certain types of companies, including a legal aid office or public defender office; an accredited law school; a bona fide nonprofit community organization; a governmental agency; a bar association; a military legal assistance office; a lawyer referral service operated or sponsored by a bar association; or “any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries.” RPC 7.3(e)(1) to (e)(4).

A “bona fide organization” that furnishes or pays for legal services to its members or beneficiaries must satisfy several other conditions, including the requirement that the organization file with the Supreme Court “a report with respect to its legal service plan.”² The company that was the subject of the UPL Committee grievance does not meet the definition for a bona fide organization offering a legal service plan; it operates on a pay-for-service business model. The company has no “members or beneficiaries” to whom legal services are “furnished” and “paid for” through a legal service plan. Rather, customers contract with the company and pay for specific legal services. Lawyers may not be recommended or paid by this type of company to furnish legal services to the company’s customers.

Accordingly, companies that are not law firms cannot provide legal services, either through staff lawyers or by furnishing outside lawyers, to customers of the companies. Such

² Examples of such bona fide organizations are unions and professional organizations that offer their members a legal service plan. Employers may also contract with a bona fide organization to administer a legal service plan as a workplace benefit for their employees.

companies engage in the unauthorized practice of law. A lawyer who provides legal services to customers of the company is assisting the company in the unauthorized practice of law, in violation of Rule of Professional Conduct 5.5(a)(2). If the lawyer receives a fee from the company, the lawyer is impermissibly fee-sharing in violation of Rule of Professional Conduct 5.4(a). Further, a lawyer who is recommended or paid by the company to furnish legal services to the company's customers violates Rule of Professional Conduct 7.3(e).