

**IN THE SUPREME COURT  
STATE OF FLORIDA**

THE FLORIDA BAR,

**CASE NO. SC18-149**

Petitioner,

v.

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.

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**RESPONDENTS TIKD SERVICES LLC AND CHRISTOPHER RILEY'S  
RESPONSE TO PETITIONER'S MOTION TO STRIKE AND MOTION  
FOR JUDGMENT ON THE PLEADINGS**

Respondents TIKD Services LLC (“TIKD”) and Christopher Riley, pursuant to Florida Rule of Appellate Procedure 9.300, hereby respond to the Motion to Strike (“MTS”) and Motion for Judgment on the Pleadings (“MJP”) filed by Petitioner, the Florida Bar (the “Bar”) related to the Bar’s Petition Against the Unlicensed Practice of Law (“Petition”). As demonstrated herein, the Bar has not met the standard for a judgment on the pleadings or to strike any of the Respondents’ affirmative defenses. Moreover, as established by Respondents’ now uncontested Motion for Summary Judgment (“MSJ”), the material facts are

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not in dispute, and those facts prove Respondents are not engaged in the unauthorized or unlicensed practice of law (“UPL”).

## **ARGUMENT**

When considering a judgment on the pleadings, the court must “construe as false all allegations of the moving party which are denied.” *Cuccarini v. Rosenfeld*, 76 So. 3d 328, 330 (Fla. 3d DCA 2011). Therefore, the specific denials in the Respondents’ Answer alone preclude herein a judgment on the pleadings. *Id.* Moreover, a judgment on the pleadings is improper where there are factual issues to resolve. *Id.*<sup>1</sup> Here the Respondents have not only denied the specific facts necessary for the Bar to obtain a judgment on the pleadings, but have also placed uncontested facts in the record through the MSJ which establish the Bar is not entitled to any relief and the Petition should be dismissed.

### **A. The Bar Fails to Establish Entitlement to a Judgment on the Pleadings.**

The Bar’s MJP is bereft of any substantive legal analysis or factual basis. Additionally, the Bar has simply ignored the Respondents’ MSJ, rendering the facts set forth therein uncontested. *See, e.g., Black Point Assets, Inc. v. Fed. Nat’l Mortg. Ass’n*, 220 So. 3d 566, 569 (Fla. 5th DCA 2017) (“In the absence of evidence in opposition to summary judgment, the party moving for summary

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<sup>1</sup> *Miller v. Eatmon*, 177 So. 2d 523, 524-25 (Fla. 1st DCA 1965), is inapposite as therein the court acknowledged that it was a special circumstance because of the stipulation in the trial court that rendered the motion “more appropriately treated . . . as one for summary” judgment.

judgment need only establish its prima facie case.”); *Wlodyka v. Matthews*, 126 So. 3d 1084, 1085 (Fla. 4th DCA 2012) (affirming summary judgment after opposing party submitted nothing in opposition).

The cases the Bar cites in the MJP, a mere repeat of three of the six cases included in the Petition, are factually inapposite. The Bar now simply re-cites these three cases and avers, without analysis, that Respondents’ conduct is similar to features of two of the three cases (*Consolidated Business* and *We The People*). To prevail, the Bar must *prove* what specific conduct by Respondents actually constitutes UPL. But the two cases the Bar relies on do not establish that the Respondents’ conduct is UPL.

The Bar proceeds under a theory that Respondents advertise, collect a fee, and then select and pay an attorney to perform legal services (MJP at 4), and “TIKD provides customers legal services by contracting with and paying Florida licensed attorneys to represent TIKD customers.” (MJP at 5). This fails to establish an entitlement to judgment on the pleadings. The Bar has yet to explain how Respondents’ activities actually run afoul of the purpose of UPL regulation, namely, “to protect the consuming public from being advised and represented in legal matters by unqualified persons who may put the consuming public’s interest at risk.” *Fla. Bar v. Neiman*, 816 So. 2d 587, 597 (Fla. 2002). Thus the focus of this Court’s UPL jurisprudence is on the actual delivery of legal services by

unqualified, unlicensed persons, and *not* on the mere payment of fees by a third party, a payment *expressly authorized* under the Rules Regulating the Florida Bar (Rules 4-1.8(f) and 4-5.4(d)). Moreover, the undisputed facts demonstrate the customer, not Respondents, actually contract with licensed, independent Florida lawyers providing the legal representation. (MSJ, Ex. 1 ¶¶ 9, 12–17).

**1. Consolidated *Business* and *We The People* Do Not Establish UPL by Respondents in this Case.**

As discussed in Respondents’ Answer and MSJ, *Consolidated Business* involved a non-lawyer owned and operated corporation that directly employed Florida lawyers as *full-time employees to provide legal services* and *extensively controlled* the details of how the lawyers delivered those legal services. *Fla. Bar v. Consol. Bus. & Legal Forms, Inc.*, 386 So. 2d 797, 798-800 (Fla. 1980). The record therein contained seventeen paragraphs of factual findings supporting the conclusion that the for-profit corporation controlled the details of the lawyer-employees’ legal representation of their clients and the attorney-client relationships, and therefore was engaged in UPL, including: (1) established rules and policies governing fees, permissible conference time with clients, and required legal forms; (2) had access to clients’ files; (3) employed legal secretaries with access to clients’ files; (4) directed and controlled the legal secretaries’ activities; (5) terminated lawyers without regard to transfer of client files; (6) assigned new lawyers to take over client files upon termination of a prior attorney; (7) exerted a

proprietary interest in the clients' case files; (8) and managed specific client cases in a profit-oriented manner that resulted in client injury or inadequate representation. 386 So. 2d at 799-800. Lawyer-employees were also fired and hired, resulting in the switching of lawyers for hundreds of clients without their consent. *Id.* Here, the uncontested facts set forth in the MSJ demonstrate the Respondents simply do not engage in any of the conduct described in *Consolidated Business*. TIKD does not have lawyer-employees; TIKD's customers and licensed, independent lawyers enter into direct attorney-client relationships, which either party may decline; and the lawyers represent the TIKD's customers without control or input from TIKD. (MSJ, Ex. 1 ¶¶ 9, 12-17).

*We The People* involved a for-profit corporation, owned and operated by non-lawyers, which (1) advertised and performed form-preparation services extending far beyond the typing and selling of forms and (2) had directly employed an attorney to give legal advice to its customers. *Fla. Bar v. We The People Forms & Serv. Ctr. of Sarasota, Inc.*, 883 So. 2d 1280, 1281-84 (Fla. 2004). Here again, the uncontested facts set forth in the MSJ prove Respondents simply do not engage in any such conduct.

Given the Bar's failure to introduce any evidence into the record, and indeed, to even respond to the MSJ, the uncontested facts in the record before the Court are as follows: The administrative and financial services provided by TIKD

are separate and distinct from the legal services provided by the lawyers who represent TIKD's customers. (MSJ, Ex. 1 ¶¶ 9, 12, 13, 15–17). TIKD provides no legal advice or representation and expressly advises all TIKD customers of this fact in its terms of service. (MSJ, Ex. 1 ¶ 9). All legal advice and representation is provided by independent, licensed Florida lawyers pursuant to a separate attorney-client agreement. (MSJ, Ex. 1 ¶¶ 9, 12–17). TIKD is not involved in the attorney-client relationship or attorney-client communications and does not direct or influence the attorneys' legal judgment or representation. (MSJ, Ex. 1 ¶¶ 15–17). A finding of UPL is not supported by these uncontested facts.

Moreover, the Bar's claim that Respondents have failed to "cite to any case law, statute, rule, or regulation which would authorize a nonlawyer or nonlawyer entity to contract with licensed Florida attorneys to provide legal services directly to the public" (MJP at 6) is simply incorrect. Respondents cited to the Rules Regulating the Florida Bar 4-1.8(f) and 4-5.4(d), which allows a lawyer to accept compensation from a third party, so long as the representation does not present conflicts and disclosure is made, circumstances that TIKD satisfies. (Answer at 7, MSJ at 10) Indeed, Respondents have repeatedly cited to the common practice of an insurance company hiring and paying a lawyer on behalf of its insured. (Answer at 7, MSJ at 10). The uncontested facts herein establish TIKD pays a fee authorized expressly by the Rules, but does not contract with the licensed,

independent Florida lawyers, and has no involvement in or control over the legal representation provided by those lawyers. (MSJ, Ex. 1 ¶¶ 12–17).

Moreover, TIKD’s terms of service prominently state that TIKD is not a law firm, that it does not provide legal advice, and that all legal services come from independent lawyers. (MSJ, Ex. 1A ¶ 3). This pre-purchase, conspicuous explanation and disclaimer is sufficient to put a reasonable consumer on notice that TIKD is not a law firm and does not practice law.<sup>2</sup> Thus, the Bar’s allegation that Respondents advertise in a manner that may lead a reasonable lay person to believe they are qualified to offer legal services to the public is simply untenable, as the Bar has failed to introduce *any* facts supporting this bald assertion.

## **2. Specific Denials in the Respondents’ Answer Preclude a Judgment on the Pleadings**

The Bar provides the uncontroversial standard on a motion for judgment on the pleadings that precludes the Bar’s requested relief: “The court must also construe as false all allegations of the moving party which are denied.” *Cuccarini*, 76 So. 3d at 330. The Respondents specifically denied many of the Petition’s allegations, including the following:

- Respondents denied that they are engaged in the practice of law.

(Answer, ¶¶ 1, 2, 4)

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<sup>2</sup> As noted in the MSJ, the TIKD website contains FAQ’s which further notify prospective customers that TIKD is not an attorney and does not provide legal services. (MSJ at 11–12).

- Respondents denied that they advertise in a fashion which may lead a reasonable lay person to believe they are qualified to provide legal services. (Answer, ¶5)
- Respondents denied that the Petition accurately or fully describes TIKD’s advertisements. (Answer, ¶6)
- Respondents denied that they suggest the services provided by TIKD are the equivalent of or a substitute for the services of an attorney. (Answer, ¶7)
- Respondents denied that the Petition accurately describes the content of TIKD’s website. (Answer, ¶7)
- Respondents denied that the independent attorneys paid by TIKD are “TIKD lawyers” or are controlled or directed by TIKD. (Answer, ¶11)
- Respondents also wholly denied the Petition’s paragraphs 9, 10, and 12 through 19. (Answer at 3-4)

Construing the above allegations in the Petition as false, nothing remains in the Petition supporting judgment in favor of the Bar.



**B. The Bar Does Not Meet the Standard to Strike an Affirmative Defense.**

It is improper to grant a motion to strike if the affirmative defense is legally sufficient on its face and presents a bona fide issue of fact. *Hulley v. Cape Kennedy Leasing Corp.*, 376 So. 2d 884, 885 (Fla. 5th DCA 1979); *see also Bay Colony Office Bldg. Joint Venture v. Wachovia Mortg. Co.*, 342 So. 2d 1005, 1006 (Fla. 4th DCA 1977) (“striking of pleadings is not favored and is a drastic action to be used sparingly by courts”).

The Bar states only that it “denies and avoids” each affirmative defense, that each is not an avoidance or affirmative defense under Rule 1.110, and that each does not raise any new matters. For the fourth affirmative defense, the Bar also claims that Respondents’ lack standing. On those conclusory assertions, the Bar claims each affirmative defense “should be stricken accordingly.” The Bar cites no cases, does not explain how the claims are legally insufficient, and does not explain how the claims fall short of the standards of Rule 1.110 of the Florida Rules of Civil Procedure. The Bar’s motion to strike should therefore be denied.

## CONCLUSION

As Respondents explained in the MSJ, this is not a complex case. The now uncontested facts establish Respondents do not engage in any acts constituting the unauthorized practice of law, and they do not contract with, employ or control the licensed, independent Florida lawyers who provide legal advice and representation to TIKD customers. Based on the foregoing, Respondents TIKD Services LLC and Christopher Riley respectfully request that this Court deny the Bar's Motion to Strike and Motion for Judgment on the Pleadings, grant Respondents' Motion for Summary Judgment, dismiss all claims asserted in the Petition, and grant such other and further relief the Court deems necessary and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing was served by electronic mail on April 30, 2018 on all counsel listed below:

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