

**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 FOR SUMMARY JUDGMENT**

Respondents TIKD Services LLC (“TIKD”) and Christopher Riley, pursuant to Florida Rule of Appellate Procedure 9.300, hereby respond in opposition to the Motion for Summary Judgment (“MSJ”) filed by Petitioner, the Florida Bar (the “Bar”). As developed herein, the Bar’s latest, and belated, filing fails yet again to introduce any evidence the Respondents are engaged in the unlicensed practice of law (“UPL”).

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## ARGUMENT

The factual record before this Court is uncontroverted: TIKD is simply not engaged in any activity that constitutes UPL.<sup>1</sup> Rather, TIKD deploys technology to facilitate the resolution of a traffic citation, substantially reducing the burden, time, and expense now shouldered by everyday individuals. TIKD provides a different and modern way for consumers to access the services of a licensed, independent Florida attorney. But as the uncontroverted record establishes, there is complete separation between TIKD's administrative and financial services, and the legal representation provided to TIKD customers by licensed, independent attorneys. In sum, TIKD facilitates the access, but does not provide the legal services.

Yet unmoved, the Bar asks the Court to shut TIKD down without even a whisper of evidence demonstrating the public is receiving “incompetent, unethical or irresponsible” representation, the fundamental justification for UPL regulation. *Fla. Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980). That TIKD technology affords the working public both (1) a convenient solution to a common challenge that eliminates uncertainty and (2) access to competent legal counsel provided by licensed, independent Florida attorneys should be encouraged by the Bar as a

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<sup>1</sup> Rather than repeat their prior submissions, Respondents adopt and incorporate herein by reference the facts and arguments set forth in the Answer, Motion for Summary Judgment, and Response to the Bar's Motion for Judgment on the Pleadings.

logical expansion of access to justice in the modern age.<sup>2</sup> But instead, the Bar ignores the procedural Rules applicable to that working public as private litigants<sup>3</sup> and seeks to shut TIKD down without any even remote evidence of harm to the consumers the Bar purports to represent. Therefore, “[b]ecause the natural tendency of all professions” is “to act in their own self-interest,” the Court should herein “closely scrutinize all regulations tending to limit competition in the delivery of legal services to the public, to determine whether or not such regulations are truly in the public interest.” *Fla. Bar v. Brumbaugh*, 355 So. 2d 1186, 1189 (Fla. 1978).

Even after a year-long investigation, the Bar offers nothing to contravene TIKD’s evidence and presents no evidence of consumer harm. Indeed tellingly, at no time does the Bar contend that the legal services provided to TIKD customers

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<sup>2</sup> See, e.g., Rawan Bitar, *Michael J. Higer: President of the Florida Bar*, 91 Fla. Bar J. 8 (July/August 2017) (“Access to justice is a significant issue in Florida and all around the country . . .”).

<sup>3</sup> The Bar styles its MSJ in part as a “Response” to the Respondents’ MSJ filed April 9, 2018. However, any such response was due within 10 days of Respondents’ filing per Florida Rule of Appellate Procedure 9.300(a), and thus is now long overdue. Moreover, the Bar’s MSJ conflicts squarely with its own first filed Motion for Judgment on the Pleadings (“MJP”), wherein the Bar asserted that “on the basis of the undisputed facts established in this matter by the pleadings, the moving party is entitled to judgment as a matter of law.” Bar MJP at 2. Now, the Bar attaches deposition testimony, affidavits, and website screen shots introducing “new” facts, new arguments, new case law, and new theories. Yet, despite these belated, hyperbolic, and inconsistent filings, there still is no evidence the Respondents are engaged in UPL.

by licensed, independent Florida attorneys has or will result in consumers receiving “incompetent, unethical or irresponsible” representation. Thus the only evidence before the Court demonstrates the Bar has not and cannot establish that TIKD is engaged in UPL:

- TIKD provides an innovative, technology-based solution for Florida drivers who have received traffic tickets. Respondents’ MSJ, Ex 1 ¶ 2.
- All legal services relating to the ticket are provided by licensed, independent Florida attorneys who are not employed or controlled by TIKD. *Id.* at ¶ 9.
- The independent attorney handles all aspects of the ticket defense. *Id.* at ¶ 17.
- TIKD does not receive any fees, payments, or other compensation from these independent lawyers. *Id.* at ¶ 18.
- TIKD pays the lawyers a flat fee per ticket defended, regardless of outcome. *Id.*
- TIKD does not instruct the attorneys on how to advise or represent the drivers. *Id.* at ¶ 16.
- The attorney is free to accept or decline the representation. *Id.* at ¶¶13-14.
- TIKD does not provide any legal advice or legal services, and does not participate in the attorney-client relationship or communications between the TIKD customer and the licensed, independent Florida attorney engaged to represent that customer. *Id.* at ¶ 9, 15, 16.

- The TIKD Terms of Service make clear the customer authorizes TIKD to arrange for the retention of a licensed, independent Florida attorney to represent the customer, and to pay the attorney a fee:

**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.

Respondents' MSJ, Ex 1A ¶ 7.

- TIKD discloses to its customers that it is “**not an attorney and does not provide any legal advice,**” and that all legal services are provided by independent lawyers:

**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.**

*Id.* at ¶¶ 1, 3.

- TIKD does not guarantee the outcome of any ticket or that its customers will not receive “points.” Respondents' MSJ, Ex 1 ¶ 8.

**A. The Bar’s Cited Cases do not Support the Relief Requested.**

The Bar continues to rely primarily on two cases, *Consolidated Business* and *We The People*. Both are inapposite. Indeed, as demonstrated before (*see* Answer at 10-12; TIKD’s MSJ 16-17; Response to MJP 4-5), these cases involve the direct provision of legal services by non-lawyer entities which directly employed lawyers and controlled all aspects of the legal services provided and the attorney-client relationship.

**1. Consolidated Business.**

In *Consolidated Business*, this Court found that the respondents were “engaged in the business of offering legal services through members of The Florida Bar who are its *full time employees*.” *Fla. Bar v. Consol. Bus. & Legal Forms, Inc.*, 386 So. 2d 797, 798 (Fla. 1980). But here, all legal services are provided by licensed, independent attorneys. The Bar attempts to sidestep this critical distinction by claiming those independent attorneys are independent contractors. Bar MSJ at 15-16. However, the distinction between the attorneys who represent TIKD customers and an independent contractor (or employee as in *Consolidated Business*) is obvious. Both employees and independent contractors provide services for the person hiring and paying that individual. Here, the independent attorneys provide no services for TIKD. Rather, the legal services are provided by the independent attorney to the TIKD customer and rendered pursuant

to a separate attorney-client retention agreement with that customer.<sup>4</sup> The fact TIKD pays the lawyers does not convert TIKD’s actions into “the practice of law” as the Rules specifically authorize such payment so long as the client consents, there is no interference with the attorney-client relationship or the lawyer’s independent judgment, and client information is protected. *See* R. Regulating Fla. Bar 4-1.8(f), and 4-5.4(d). There is simply no evidence the TIKD structure violates these Rules.<sup>5</sup>

Moreover, in *Consolidated Business*, it was “clear” non-lawyer “officers and stockholders . . . supervise[d] and control[led] the day to day business” (*i.e.*, the delivery of legal services), and “maintain[ed] a degree of control over the legal services it furnishe[d].” 386 So. 2d at 798. Here there is simply no evidence of TIKD supervision, control, direction, or involvement in the legal services provided by the independent attorneys to TIKD customers. Here again, the Bar seeks to sidestep this critical distinction by asserting loosely that TIKD “remain[s] involved” with the representation of the client. Bar MSJ at 15. But providing

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<sup>4</sup> Further demonstrating independence, and unlike an employee or independent contractor, the attorneys who represent TIKD customers may decline any individual representation. The lawyer/employees who worked for Consolidated Business and We The People had no ability to decide who they represented – that was decided by the non-lawyer controlled company.

<sup>5</sup> The Bar’s attempt to deconstruct TIKD’s insurance analogy is a *non-sequitur*. The Rules do not provide that **only** an insurance company can serve as a third-party payor. To the contrary, the Rules provide that **any** third-party can serve as payor as long as the requirements of the Rules are satisfied.

informational updates and/or honoring the financial commitment to the customer does not evidence any control over the independent attorney-client relationship or any involvement in the provision of legal services, and it does not constitute UPL.

## **2. *We The People.***

In *We The People*, the respondents offered legal services directly to their customers by employing a licensed Florida attorney. *Fla. Bar v. We The People Forms & Serv. Ctr. of Sarasota, Inc.*, 883 So. 2d 1280, 1281 (Fla. 2004) (“offered legal services directly to their customers by employing a licensed Florida attorney”). Here, TIKD offers no legal services and does not employ any lawyers. TIKD customers receive all legal services through an independent attorney-client relationship. There is simply no evidence TIKD engages in any conduct remotely similar to that found unlawful in *We The People*.

## **B. The Bar’s Public Policy Arguments are Unavailing and Irrelevant.**

The Bar introduces an overarching policy argument in support of its position, namely, that the point of UPL regulation is to protect the public. The Bar cites *Moses* for the agreed proposition that the “single most important concern . . . is the protection of the public from incompetent, unethical, or irresponsible representation.” Bar MSJ at 23 (quoting *Moses*, 380 So. 2d at 417). But this record is devoid of any evidence of “incompetent, unethical, or irresponsible representation.” Moreover, TIKD does not provide any legal services. All legal



services are provided by licensed, independent Florida attorneys subject fully to the Bar's oversight.

Similarly, the Bar cites *Sperry* for the proposition — again uncontroversial — that a UPL proceeding is designed to “protect the public from being advised and represented in legal matters by unqualified persons.” Bar MSJ at 22-23 (quoting *State ex rel. Fla. Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962), *vacated sub nom. Sperry v. State ex rel. Fla. Bar*, 373 U.S. 379 (1963)); *see also Sperry*, 373 U.S. at 402 (“the State is primarily concerned with protecting its citizens from unskilled and unethical practitioners”). TIKD of course agrees. This is why TIKD customers are all represented by licensed, independent Florida attorneys. Thus, there is simply no evidence TIKD customers are being represented by unqualified persons. The only record evidence establishes licensed, qualified, independent Florida lawyers render all legal services.

The Bar then presents a meandering discussion of various Rules Regulating the Florida Bar, effectively seeking, without any evidence, to condemn the Respondents for hypothetical potential misconduct by Florida attorneys who represent TIKD customers. But none of these near whimsical arguments bear any rational relationship to the sole issue before the Court, namely, whether Respondents are engaged in UPL.

For example, this case does not involve fee sharing. That is, as the Bar appears to grasp, the lawyer does not collect a fee and then split that fee with TIKD. Bar MSJ at 24 (“Respondents share customers’ payments with a Florida lawyer”). See R. Regulating Fla. Bar 4-5.4. The only legal fee paid is what the lawyer has agreed to accept from TIKD. There is no evidence that fee is shared with anyone. But the Bar seems troubled by the fact that a TIKD customer benefits from a pre-negotiated rate for independent legal services. This mistaken and misplaced concern relates more to protectionism than legitimate UPL regulation.

This case also does not involve any issue regarding lawyer advertising. The Bar cites to *Counseling, Research & Training Services*, for the proposition that advertising legal services can constitute legal services. Bar MSJ at 7, 21. That case enjoined further UPL by the respondents after they admitted to UPL by “advertising in a local newspaper the offer to provide both legal counselling and the giving of legal advice for a fee” 270 So. 2d at 365. But here, TIKD does not advertise for or provide any legal services. The TIKD Terms of Service make quite clear TIKD does not offer any legal advice, and there is no evidence TIKD provides any legal counselling.<sup>6</sup>

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<sup>6</sup> *Lugo-Rodriguez* and *Gordon* are likewise inapposite. Those cases held, respectively, that advising as to legal matters or advertising to provide legal advice generally was UPL. *Fla. Bar v. Lugo-Rodriguez*, 317 So. 2d 721, 724 (Fla. 1975)

To the extent the Bar seeks to rely on TIKD’s advertising to establish its UPL claim, the *Catarcio* case (cited by the Bar) is instructive. In *Catarcio*, the respondent had (1) a business card with his name followed by “J.D.”; (2) advertised in the “Legal” section of a weekly publication under the heading of “Professional Services”; (3) offered a “Free Consultation” in the advertisement; and (4) depicted the Scales of Justice on his business card. *Fla. Bar v. Catarcio*, 709 So. 2d 96, 98 (Fla. 1998). Thus Mr. Catarcio falsely held himself out as a lawyer. In contrast, TIKD delineates clearly it is not a law firm and it does not provide legal services. All legal services provided to TIKD customers are provided by licensed, independent Florida attorneys.

Finally, the Bar claims, incorrectly, that Respondents distinguish the UPL case law based on the nature of the legal services at issue, *e.g.*, traffic citation defense versus other areas of the law such as divorce or bankruptcy. This is simply inaccurate. Moreover, TIKD does not provide legal services of *any* kind, nor does it employ or control the licensed, independent lawyers who do provide the legal services. Choosing customers, paying a lawyer to represent a TIKD customer (in

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(respondent “enjoined from the further preparation of Immigration and Naturalization forms for others, with or without charge; from advertising or holding himself out to perform said services”); *Fla. Bar v. Gordon*, 661 So. 2d 295, 295 (Fla. 1995) (respondents eventually defaulted after allegations that on “numerous instances in which respondents purported to represent numerous persons in litigation, collected fees from such persons under the guise of being lawyers, and failed to perform the promised services”). Again, here TIKD makes clear it is not advertising for or offering any legal services or any legal advice.

conformance with the Rules), capping customers' financial exposure, and communicating publically available information related to a traffic ticket case is simply not the provision of legal services or the rendering of any legal advice.

### **CONCLUSION**

Based on the foregoing, Respondents, TIKD Services, LLC and Christopher Riley, respectfully request that this Court deny the Bar's Motion for Summary Judgment, 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,

*By: /s/ Christopher M. Kise* \_\_\_\_\_

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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 June 14, 2018 on all counsel listed below:

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