

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

CASE NO. SC18-149

Petitioner,

v.

Florida Bar File Nos.

20174035(11B) and

TIKD SERVICES LLC,

20174045(11B)

A Foreign Limited Liability
Company,

and

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

Respondents.

**RESPONDENTS' RESPONSE TO
PETITIONER'S OBJECTION TO THE REPORT OF THE REFEREE**

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STATEMENT OF THE CASE AND OF THE FACTS

Respondents, TIKD Services LLC (“TIKD”) and Christopher Riley (“Riley”) (collectively, “Respondents”), pursuant to Rule 10-7.1(f) of the Rules Regulating the Florida Bar, hereby respond in opposition to the Objection (“Objection”) to the Report of Referee (“Report”; Doc. No. 33)¹ filed by Petitioner, the Florida Bar (the “Bar”) pursuant to the Bar’s Petition Against the Unlicensed Practice of Law (“Petition”; Doc. No. 1).

Despite the protracted history of these proceedings, the underlying facts have never been in dispute.² Those undisputed facts establish, and the Referee determined, as follows:

TIKD owns and operates a website at <http://www.tikd.com>, which provides a modern technological platform and a financial guarantee to facilitate the resolution

¹ The use of “Doc. No. ___” herein refers to the document numbers listed in the Index of Record before this Court.

² Both Respondents and the Bar sought summary judgment, first before this Court (Respondents’ Motion for Summary Judgment, filed Apr. 9, 2018 (Doc. No. 10); Bar’s Motion for Summary Judgment filed June 4, 2018 (Doc. No. 14)) and then before the Referee (Transcript of Status Conference (Dec. 11, 2018) at 4 (Doc. No. 32)). During the initial phase of the proceedings in this Court, the Bar did not dispute any of the facts set forth in TIKD’s Motion for Summary Judgment. The Bar also requested the appointment of the Referee, yet following such appointment, the Bar did not take any discovery or seek to introduce any additional evidence. The Bar cannot therefore now contend the facts herein are anything but “undisputed.” *See Wilmo on the Bluffs, Inc. v. CSX Transp.*, 559 So. 2d 294, 295 (Fla. 1st DCA 1990) (party may not seek summary judgment and later contend on appeal that material issues of fact exist).

of a traffic citation. (Report at 6). A driver that receives a traffic citation requests TIKD's services by uploading a picture of the citation from a cell phone. (Report at 6). TIKD then determines whether to provide its services to the driver. *Id.* During this process, TIKD provides no legal advice of any kind to the driver. *Id.* If TIKD declines, the driver is notified and not charged. If TIKD accepts, the driver pays TIKD a percentage of the face amount of the citation, and makes no other payments. *Id.*

At the time the driver uploads the citation and creates an account with TIKD, the driver must affirmatively assent to TIKD's Terms of Service before TIKD receives any payment. (Report at 8). TIKD's Terms of Service, available on its website, provide in pertinent part:

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.**

...

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.

(Report at 9; Doc. No. 10 at 29, 31; Doc. No. 15 at 8, 10).

TIKD does not guarantee any specific outcome. (Report at 7). Rather, in exchange for the single charge, TIKD pays a licensed, independent Florida attorney who contracts separately with the driver and undertakes representation associated with the citation, pays any fine and/or court costs imposed against the driver, and provides the driver a full refund in the event any “points” are assessed against the driver as a result of the citation. (Report at 6-7). Both the attorney and the driver must agree to the representation and then enter into an independent contractual attorney-client relationship. (Report at 7-8). Attorney and client then communicate directly and confidentially regarding the representation, and TIKD has no involvement. (Report at 8)

TIKD does not provide any legal advice or representation to the driver. (Report at 7). All legal advice and representation is provided by licensed, independent Florida attorneys in private practice who are not employed, controlled or directed by TIKD. (Report at 7). TIKD pays the licensed, independent Florida attorney a flat fee per citation, and TIKD receives no fees or compensation of any kind from the attorney. (Report at 7).

There is no record evidence that TIKD has given any driver legal advice or representation, that TIKD employed or controlled any lawyers, that any TIKD

customer believed TIKD was a law firm or provided legal services, that TIKD directed or interfered with the representation of the driver by the licensed, independent Florida attorney and/or participated in the attorney-client relationship, or that any Florida consumer has been harmed by TIKD's services.

SUMMARY OF THE ARGUMENT

The uncontroverted evidence establishes, and the Referee determined, that TIKD is simply not engaged in any activity that constitutes the unlicensed practice of law (“UPL”), and does not advertise in a way that would lead any reasonable person to conclude TIKD offers or provides legal services to the public. Further, there is no evidence TIKD presents any risk of harm to the public as any and all legal services are provided by licensed, independent Florida attorneys. To the contrary, TIKD furthers the interests of everyday Florida consumers by providing a cost-effective, technology-based means to resolve the issues presented by a traffic citation. That TIKD offers the consumer (1) a convenient solution to a common challenge which eliminates uncertainty, and (2) access to representation provided by licensed, independent Florida attorneys should be encouraged by the Bar as an innovative and logical expansion of access to justice in the information age. The Referee therefore properly recommended summary judgment be entered against the Bar, and TIKD submits respectfully that this Court should dismiss the Petition.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews a summary judgment order by a Referee *de novo*. *Fla. Bar v. Rapoport*, 845 So. 2d 874, 877 (Fla. 2003). Summary judgment is appropriate “when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.* In other words, summary judgment tests “the sufficiency of the evidence to determine if there is sufficient evidence at issue to justify a trial or formal hearing on the issues raised in the pleadings, and summary judgment is appropriate where, as a matter of law, it is apparent from the pleadings, depositions, affidavits, or other evidence that there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law.” *Fla. Bar v. Greene*, 926 So. 2d 1195, 1200 (Fla. 2006).

II. THERE IS NO EVIDENCE OF UPL

Three important cautionary principles apply in any UPL case. First, “the single most important concern in the Court’s defining and regulating the practice of law” – is preventing the harm to consumers that may be caused by non-lawyers providing legal advice and representation. *Fla. Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980); *see also Sperry v. State of Fla. ex rel. Fla. Bar*, 373 U.S. 379, 402 (1963) (“the State is primarily concerned with protecting its citizens from unskilled and unethical practitioners”). As established by the uncontroverted record, there is

simply no evidence TIKD has harmed consumers in any way. To the contrary, TIKD benefits Florida consumers³ by offering (1) a convenient solution to a common challenge which eliminates uncertainty, and (2) access to representation provided by licensed, independent Florida attorneys. Those licensed, independent Florida attorneys provide the legal advice and representation, not TIKD.⁴

Next, this Court has recognized that “the natural tendency of all professions” is “to act in their own self-interest.” *Fla. Bar v. Brumbaugh*, 355 So. 2d 1186, 1189 (Fla. 1978). Therefore, the Court will “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.” *Id.* Such scrutiny is well-applied here as the Bar’s position is actually contrary to the public interest. Indeed, the Bar’s protectionist approach ignores the undisputed facts, limits competition and limits the access of Florida consumers to innovative and modern solutions.

Finally, there is no comprehensive definition of “the practice of law,” as this Court has concluded that “any attempt to formulate a lasting, all-encompassing definition of ‘practice of law’ is doomed to failure ‘for the reason that under our

³ “TIKD furthers the consuming public’s interest by providing a speedy, efficient and relatively painless way to deal with traffic tickets.” (Report at 11).

⁴ “All legal advice and representation is provided by independent licensed Florida attorneys who are not employed or controlled by TIKD. This is uncontested.” (Report at 12).

system of jurisprudence such practice must necessarily change with the everchanging business and social order.” *Brumbaugh*, 355 So. 2d at 1191-92. Here, there is simply no evidence TIKD engages in any conduct constituting the practice of law under any definition. Indeed, the uncontroverted record establishes that TIKD provides no legal advice or representation of any kind, and does not employ, control or direct any of the licensed, independent Florida lawyers who do provide such advice and representation.

TIKD deploys technology to facilitate the resolution of a traffic citation, substantially reducing the burden, time, uncertainty, and expense shouldered by everyday individuals. TIKD provides an efficient, 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, nor does it direct or control the independent attorney-client relationship.⁵

⁵ Ironically, TIKD’s solution to traffic ticket representation is what the Bar itself has advocated in the past. *See, e.g.,* Moss, Melissa A., *Can Technology Bridge the Justice Gap?* 90 Fla. Bar J. 83 (2016) (advocating “a cooperative approach to provide the information, advice, and representation needed so that access to justice is there for Everyone, Anytime, Anywhere”); McGrane, Miles, *The First Duty of Society is Justice*, 77 Fla. Bar J. 8 (2003) (“Helping to ensure Hamilton’s vision that all of our citizens deserve the opportunity to be heard and pursue justice in this great

The Referee carefully reviewed the evidence and found TIKD employs an innovative approach to “providing a speedy, efficient and relatively painless way to deal with traffic tickets.” (Report at 11). The Referee also recognized the pragmatic reality of the benefits conferred by TIKD’s novel approach, noting “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.” (Report at 16).

Here, TIKD’s services consist of providing “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.” (Report at 12). The only evidence in this record regarding the provision of legal services is that all “legal advice and representation is provided by independent licensed Florida attorneys who are not employed or controlled by TIKD.” *Id.* Finally, TIKD “does not advertise in a way that would lead a reasonable person to believe that Respondents are offering legal

land is the mission of The Florida Bar Foundation”); Bitar, Rawan, *Michael J. Higer: President of the Florida Bar*, 91 Fla. Bar J. 8 (2017) (“Access to justice is a significant issue in Florida and all around the country, Higer explained, and depending on the statistics and reports, there are about 80 percent of citizens entering the legal system who are unrepresented or underrepresented.”).

services to the public.” *Id.* There is simply no possibility for doubt as the TIKD Terms of Service expressly provide and disclose, in bold and all caps, that “**TIKD IS NOT A LAW FIRM . . . NOT ATTORNEYS AND [DOES] NOT DISPENSE LEGAL ADVICE.**” (Doc. No. 10 at 29; Doc. No. 15 at 8).

The Bar submitted no evidence to contradict these conclusions by the Referee, thus, the Bar’s Petition fails as a matter of law. The Bar cannot overcome the fundamental fact that licensed, independent lawyers direct and control all aspects of the representation and make the independent legal judgments necessary to provide any legal services. Thus, the Bar’s Objection should be overruled, the Referee’s report should be adopted, and the Bar’s Petition should be dismissed.

To avoid dismissal, the Bar complains of what it refers to as improper “inferences” by the Referee, such as “TIKD lawyers are not employed or controlled by Respondents” or “TIKD is not involved in the attorney’s defense of the ticket.” (Objection at 6). These are not “inferences,” they are factual evidence in the record. Riley stated in his affidavit in support of TIKD’s motion for summary judgment that TIKD “does not instruct the attorneys on how to advise or represent the drivers,” “does not participate in attorney-client communications,” and “is not involved in the attorney’s defense of the ticket.” Doc. No. 15 at 4, ¶16. Further, Riley testified that the “attorney is free to accept or decline the representation,” *id.* at ¶13 and TIKD

“pays the lawyers a flat fee per ticket defended, regardless of outcome.” *Id.* at ¶ 18.

The Bar did not contest these facts nor introduce any contrary evidence.

The same analysis applies to the rest of the Bar’s complained-of “inferences.”

The Bar is merely arguing for a different result based on the uncontroverted evidence. The Bar cannot create a genuine dispute as to a material fact by characterizing factual findings based on uncontroverted evidence as “inferences.”⁶

The Bar’s chief error in the Objection, and indeed, throughout this case, has been to assume that because TIKD pays for a lawyer it must be practicing law. But, as the Referee noted correctly, “[t]he fact that TIKD, rather than the customer, pays the attorney does not convert TIKD’s services into the practice of law. It is

⁶ Purported “amicus”, the Ticket Clinic is nothing more than a disgruntled former litigant against TIKD. *See TIKD Servs. LLC v. Fla. Bar et al.*, Case No. 17-24103 (S.D. Fla.); *TIKD Servs. LLC v. Gold & Assocs., P.A., et al.*, Case No. 2017-008798-CA-01 (Fla. 11th Jud. Cir.); *Gold & Assocs., P.A., et al. v. TIKD Servs. LLC, et al.*, Case No. CACE17022790 (Fla. 17th Jud. Cir.). The Ticket Clinic appears to lead the amicus effort, as it is the lead participant, and is supported by its own lawyer in the antitrust case and former Ticket Clinic associates, as purported “amicus.” To defend its monopolistic approach, the Ticket Clinic manufactures an extra-judicial “parade of horrors,” which simply ignores the uncontroverted record. For example, the Ticket Clinic claims that TIKD splits fees with lawyers. (Amicus Br. at 15-16). But the uncontroverted evidence that establishes the opposite is in fact true. TIKD collects payment from the customer, pays the licensed, independent lawyer a flat fee per citation, accepts the risk of the resolution of the traffic ticket by that lawyer, and pays any fines or court costs ordered. (Report at 6-8). The licensed, independent lawyer never pays anything to TIKD. The Ticket Clinic also imagines, again without any evidence, that TIKD’s model will somehow be replicated in tax or family law (*i.e.*, “TAXD” and “KIDZ”). (Amicus Br. at 13-14). But this biased speculation has no bearing on the required UPL analysis, which can only be based on the uncontroverted record.

permissible for a third party to pay an attorney on behalf of a client, if the relationship is disclosed.” (Report at 12 (citing 4-1.8(f), 4-54.(d), R. Regulating Fla. Bar)). The Bar’s only apparent response is “that’s different.” (Doc. No. 14 at 22). But the Bar’s subjective view does not contravene the undisputed record or the established rules regarding the propriety of third party payment of fees.

III. THE CASE LAW SUPPORTS DISMISSAL

The Bar has not cited a single case supporting its claims against the Respondents. Indeed, the uncontroverted factual record reveals all of the Bar’s cited cases are inapplicable and/or inapposite.

The Bar relies primarily on two cases, *Fla. Bar v. Consol. Bus. & Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980) and *Fla. Bar v. We The People Forms & Serv. Ctr. of Sarasota, Inc.*, 883 So. 2d 1280 (Fla. 2004). Nearly all of the Bar’s arguments are devoted to a discussion of these cases. Yet, as demonstrated below, neither supports the requested relief.

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*.” *Consolidated Business*, 386 So. 2d at 798. Here, the uncontroverted record establishes that all legal services are provided by licensed, independent attorneys. The independent attorneys provide no services for TIKD. Rather, the legal services are provided by the independent attorneys to their

respective clients and rendered pursuant to a separate attorney-client retention agreement.⁷ As noted above, the mere fact TIKD pays the lawyers does not convert TIKD's actions into "the practice of law". 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.⁸

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. (Objection at 17-19). But providing informational updates and/or honoring the financial commitment to the customer

⁷ Further demonstrating independence, and unlike an employee or independent contractor, the attorneys who represent TIKD customers may decline any individual representation. The lawyer/employees in *Consolidated Business* and *We The People* had no ability to decide who they represented – that was decided by the non-lawyer controlled company.

⁸ 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.

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.

In *We The People*, the non-lawyer respondents offered legal services directly to their customers by **employing** a licensed Florida attorney. *We The People*, 883 So. 2d at 1281 (“offered legal services directly to their customers by employing a licensed Florida attorney”). Here, the uncontroverted record establishes that TIKD offers no legal services and does not employ any lawyers. TIKD customers receive all legal services through an independent attorney-client relationship.⁹ There is simply no evidence TIKD engages in any conduct found unlawful in *We The People*.

The Bar cites many other cases, offered with little analysis, which are likewise inapposite and unpersuasive. For example, the Bar cites *Fla. Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962), *vacated sub nom. Sperry v. State of Fla. ex rel. Fla. Bar*, 373 U.S. 379 (1963), arguing that the “reasonable protection of [a driver’s] important

⁹ The Bar simply ignores the evidence and argues that “any nonlawyer, disbarred lawyer, or out-of-state lawyer could establish a nonlawyer entity to practice law and **hire** Florida lawyers to provide any type of legal services For example, a nonlawyer entity could **retain** lawyers A financial planning firm could **hire** a Florida lawyer [A]ny nonlawyer entity could engage in wholesale direct client solicitation while **hiring** Florida lawyers to provide legal services” Objection at 28-29 (emphasis added). This entire construct ignores the record. TIKD does not “**hire**” or “**retain**” any lawyers. Rather, as the uncontroverted record establishes, licensed, independent Florida attorneys enter into separate attorney-client relationships with TIKD customers. TIKD does not employ, control, or direct these independent attorneys. (Report at 8, 12).

rights and property require that the person giving the advice possess a knowledge and skill of the law greater than that possessed by the average citizen.” Objection at 10. But here, all the legal advice and representation is, unquestionably, provided by licensed, independent Florida lawyers, not TIKD. *Sperry* is thus inapposite.

The Bar next cites *Fla. Bar v. Moses*, 380 So. 2d 412 (Fla. 1980), claiming that TIKD’s conduct is not authorized. Objection at 10. This argument presumes, erroneously, that TIKD is engaged in the practice of law. But the uncontroverted record establishes TIKD does not provide any legal services and does not practice law. Further, that record does not demonstrate any “incompetent, unethical, or irresponsible representation” by anyone. *See Moses*, 380 So. 2d at 417. *Moses* is thus likewise inapposite.

The Bar also cites *Fla. Bar re Advisory Opinion-Medicaid Planning Activities by Nonlawyers*, 183 So. 3d 276 (Fla. 2015). There, the Court found that “(1) drafting of personal service contracts; (2) preparation and execution of qualified income trusts; or (3) rendering legal advice regarding the implementation of Florida law to obtain Medicaid benefits.” *Id.* at 277-78. But here, Respondents do not draft contracts, set up trusts, or advise consumers on any area of the law.

The Bar also cites *Fla. Bar v. Goodrich*, 212 So. 2d 764 (Fla. 1968) (cited in Objection at 29). However, *Goodrich* is not a UPL case. Therein, the respondent, a member of the Florida Bar, was cited for ethical violations. Respondent was retained

directly by a group of insurance underwriters. *Id.* at 764. The Court determined Respondent had violated ethical prohibitions regarding conflicts of interest. *Id.* at 765. The Court also determined respondent's professional services were controlled by a lay agency and his representation of clients was not direct. *Id.* Here, the uncontroverted facts establish that Respondents do not retain, employ, or direct any attorneys. Rather, licensed, independent Florida attorneys enter into separate and direct engagements with TIKD customers. Thus, *Goodrich* is simply inapposite.

The Bar also string cites numerous cases for the proposition that "it constitutes the unlicensed practice of law for a nonlawyer or a nonlawyer entity to offer to provide legal services to the public." (Objection at 25, n.7) (citing *Fla. Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000); *Fla. Bar v. Davide*, 702 So. 2d 184 (Fla. 1997); *Fla. Bar v. Warren*, 655 So. 2d 1131 (Fla. 1995); *Fla. Bar v. Lugo-Rodriguez*, 317 So. 2d 721 (Fla. 1975); *Fla. Bar v. Am. Legal & Bus. Forms, Inc.*, 274 So. 2d 225 (Fla. 1973); *Fla. Bar v. Counseling Research & Training Servs., Inc.*, 270 So. 2d 365 (Fla. 1972)). None of these cases support the Bar's assertion.

In *Miravalle*, the respondent, a non-lawyer, actually prepared and provided several filings and settlements for divorce and bankruptcy cases under the business name of "Express Legal Services, Inc." 761 So. 2d at 1050. Respondent also advertised her ability to provide such legal services. *Id.* Here, the uncontroverted

facts establish TIKD has never provided any legal advice or services, and has not advertised any ability to provide such services.

In *Davide*, the non-lawyer respondents actually prepared complaints and demand letters, rendered legal advice as to exemptions in bankruptcy proceedings, and used misleading advertising under the name of “Florida Law Center, Inc.” 702 So. 2d at 184-85. Here again, the uncontroverted facts establish TIKD does not hold itself out as providing legal services, TIKD does not provide any legal services, and all legal services are provided by licensed, independent Florida attorneys.

In *Warren*, the non-lawyer respondent actually represented persons in litigation and collected fees under the guise of being a lawyer. 655 So. 2d at 1132-33. Here, the uncontroverted facts establish that Respondents do not represent anyone, and do not collect any fees under the guise of being a lawyer or providing legal advice and representation. Again, all legal advice and representation is provided by licensed, independent Florida attorneys.

In *Lugo-Rodriguez*, the respondent prepared immigration and naturalization forms for others and held himself out as able to provide those services, conduct from which he was enjoined. 317 So. 2d at 723-24. Here, the uncontroverted facts establish that Respondents do not actually provide any legal advice, prepare or complete any forms, or advertise or hold themselves out as providing or performing such legal services.

In *American Legal & Business Forms*, the respondent sold pre-packaged forms tailored to individual divorce needs and gave legal advice over the phone in another case. 274 So. 2d at 226.¹⁰ Again, TIKD does not provide legal advice or selection of forms for customers to file in court. All legal services are provided by licensed Florida attorneys who are paid a flat fee by TIKD.

Finally, in *Counseling, Research & Training Services*, this Court enjoined the non-lawyer respondents from “advertising in a local newspaper the offer to provide both legal counselling and the giving of legal advice for a fee” after the respondents had admitted to such acts. 270 So. 2d at 365. Here, the uncontroverted record establishes that TIKD simply does not advertise for or provide any legal services. As the Referee determined, the TIKD “web site and the Terms of Service make it explicitly clear that TIKD does not hold itself out to be a law firm.” (Report at 15-16).

In sum, applying the Bar’s own cited cases to the uncontroverted facts demonstrates the Petition is simply meritless and the bar’s Objection should be overruled.

¹⁰ This Court later questioned whether the practice in *American Legal & Business Forms* is even UPL. *Brumbaugh*, 355 So. 2d at 1193 (“decision[] should be reevaluated in light of those recent decisions in other states”).

IV. THE BAR CANNOT BELATEDLY CONTRAVENE THE UNDISPUTED RECORD

As summarized above, the Bar simply failed to introduce any evidence that establishes UPL. The Bar filed its Petition, and Respondents answered and filed a motion for summary judgment as the Bar's petition on its face did not sufficiently allege UPL. Instead of responding to the summary judgment motion to show and argue material facts in dispute, the Bar filed a motion for judgment on the pleadings and, somewhat contradictorily,¹¹ a motion for appointment of a referee. Thus, the Bar did not supplement its Petition with any actual evidence.

Later, the Bar filed a cross-motion for summary judgment before this Court. (Doc. No. 14). At this stage, the Bar did submit some evidence: Riley's affidavit, already before the Court on TIKD's motion for summary judgment (Doc. No. 15); 11-pages of excerpts from Riley's deposition (Doc. No. 16); and a print out of some of the pages on TIKD's former website (Doc. No. 17). The Court then referred the case to a Referee. (Doc. No. 19). However, once before the Referee, the Bar again passed on introducing any actual evidence to support its Petition, introducing only the agreement TIKD has with some attorneys to provide legal representation to TIKD customers. (Doc. No. 25). The Bar then proceeded on the same motion for

¹¹ As this Court has pointed out, it is only proper to proceed before a Referee where there are material disputed facts. *See, e.g., Rapoport*, 845 So. 2d at 877 (“Rapoport had no right to even have a referee hear The Florida Bar's petition against the unlicensed practice of law unless there were disputed issues of material fact.”).

summary judgment filed before this Court, which repeatedly asserts that there is no genuine dispute as to any material fact. Indeed, the Bar's motion for summary judgment stated "there is no doubt or conflict in the evidence" and "Respondents have no defense and would not have anything substantive to testify to at trial which would alter the outcome." (Doc. No. 14 at 2).

Now on appeal, the Bar objects that the Referee read too much into the very evidence the Bar knowingly did not contradict. The summary judgment standard in *Greene* is apt here for the glaring omission in the Bar's case: where "it is apparent from the pleadings, depositions, affidavits, or other evidence that there is no genuine issue of material fact" summary judgment is appropriate. *Greene*, 926 So. 2d at 1200. The Bar relied on TIKD's evidence. That strategy rested on the Bar's flawed view of UPL as it applies to TIKD, and leaves the Bar without any argument on appeal. *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 judgment need only establish its prima facie case."); *Wlodyka v. Matthews*, 126 So. 3d 1084, 1085 (Fla. 4th DCA 2012) (affirming summary judgment after "Appellant presented no counter-affidavits in opposition.").¹²

¹² Amicus, the Ticket Clinic, seeks to rectify the Bar's evidentiary deficiencies through creative application of judicial notice. But the Ticket Clinic cannot supplement a factual record the Bar asserted was "uncontroverted" by reference to a

CONCLUSION

The undisputed evidence establishes that Respondents do not provide legal advice or services, do not control, direct or employ the licensed, independent attorneys who provide legal advice and services to TIKD customers, and do not advertise in a manner in which any reasonable person would conclude Respondents hold themselves out as providers of legal services. Based on the foregoing, Respondents, TIKD Services, LLC and Christopher Riley, respectfully request that this Court overrule the Bar's Objections, dismiss all claims asserted in the Petition, and grant such other and further relief the Court deems necessary and proper.

wholly separate proceeding (indeed the very proceeding in which the Ticket Clinic defended antitrust allegations asserted by TIKD). As an initial matter, none of this "evidence" establishes that TIKD has engaged in UPL, nor does it contravene the undisputed record. Moreover, setting aside the lack of merit of this "evidence," "otherwise inadmissible documents are [not] automatically admissible just because they were included in a judicially noticed court file." *Stoll v. State*, 762 So. 2d 870, 876 (Fla. 2000). Even if judicially noticing records were enough to overcome evidentiary objections, the trial court is the court that must judicially notice them, not on appeal. *See, e.g., In re D.W.*, 763 So. 2d 497, 498 n.1 (Fla. 2d DCA 2000) ("Unless the parties stipulate to the inclusion of the dependency record in the termination record or the trial court takes formal judicial notice of these records, they are not within the trial court's record and, thus, are not a part of the record on appeal."). Therefore, rather than supplementing the record, the Ticket Clinic has merely emphasized the Bar's complete failure to introduce any evidence of UPL.

STATEMENT REGARDING ORAL ARGUMENT

Respectfully, Respondents are of course willing and able to address any issues or questions the Court may seek to resolve at oral argument. However, given the uncontroverted evidence herein, and the fact such evidence has remained uncontroverted since the outset of this case, the Court may well be able to dispose of these proceedings and dismiss the Petition without the need for such argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served electronically through the Florida Courts e-Portal system on July 3, 2019 on all counsel, including those listed below:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

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