

Don Tomlinson

(April, 2021)

Arbitration and ADR Background

I have been practicing law in Arkansas and Texas for a combined 44 years. Prior to that, I was a television and then wire service (AP) reporter. My J.D. is from the University of Arkansas at Little Rock School of Law, and my LL.M. in intellectual property is from the University of Houston Law Center. I have completed basic ADR training and a host of advanced ADR training courses, specifically including arbitration. I have been designated as a Credentialed Distinguished Mediator by the Texas Mediator Credentialing Association. I have mediated more than 900 lawsuits. I have been an arbitrator since 1995. In addition to the dozens of arbitrations I have conducted by the agreement of the parties or by court appointment, I conducted many arbitrations for the predecessor organization to the Financial Industry Regulatory Authority (FINRA). For some years now and continuing through the present, I have conducted several arbitrations per month for the National Arbitration Forum (NAF) in its American Moving & Storage Association program (the NAF has used my written awards to teach new arbitrators the proper way to draft them). Prior to that, I arbitrated many hundreds of cases for the NAF in its credit-card dispute program. I am on the mediation and arbitration panels of the World Intellectual Property Organization (WIPO) headquartered in Geneva, Switzerland. I have represented clients at arbitrations. In 2016, with co-counsel, I represented a client in an arbitration resulting in a favorable award in the six figures. The losing party appealed arbitrability through the district-court level to the Texas Court of Appeals in Houston. I co-wrote the brief that resulted in a lengthy and precedent-setting opinion (we prevailed on all points in the district court and in the appellate court).

I have been serving part-time on the faculty of the National Judicial College in Reno, NV (teaching courtroom media law and media relations to state-court judges from across the country) since 2014. In 2012, I was a finalist in the *Houston Business Journal* Best Solo General Counsel awards when I was Chief Legal Officer at Vendor Safe Technologies, LLC, a high-tech company in Houston, a position I held for seven years until we sold the company. Presently, I am part-time Chief Legal Officer for ScribeRule, Inc., also a high-tech company in Houston. Additionally, I represent D.H. Griffin of Texas, Inc., a major demolition contractor. I taught the three-semester-hour mediation course as an adjunct professor at South Texas College of Law, I conducted the 40-clock-hour ADR training course for the Brazos Valley Dispute Resolution Center, and I have been a guest speaker at many ADR training seminars. I was a Clinical Professor of Law at the University of Houston Law Center for several years teaching transactional law (contract negotiating and drafting). For nearly 20 years, I taught law courses to undergraduate and graduate communication students at Texas A&M University in College Station, “retiring” in 2004 as a tenured full professor.

I believe myself to be completely qualified to arbitrate through this TDI program, and I welcome the opportunity to demonstrate that to you.

Education, Licenses, ADR Panels, Faculty Positions, Honors & Memberships

LL.M., University of Houston Law Center, 1996 (intellectual property)

J.D., University of Arkansas at Little Rock School of Law, 1977

M.J., University of North Texas, 1976 (journalism)

B.S., Arkansas State University, 1970 (journalism)

Licensed in Texas and Arkansas and in federal court in E.D. Ark., S.D. Texas, and E.D. Texas.

ADR: World Intellectual Property Organization (WIPO) (mediation), Financial Industry Regulatory Authority (FINRA) (mediation and arbitration), and National Arbitration Forum (NAF) (arbitration)
Part-Time Faculty: National Judicial College, Reno, NV (on campus of University of Nevada)
Designations: Credentialed Distinguished Mediator, Texas Mediator Credentialing Association
Awards: Finalist, 2012 *Houston Business Journal* Best Solo General Counsel Awards Competition
Memberships: State Bar of Texas

Highlighted Legal Experience Dating to Initial Licensure in 1977

- Law Office of Don Tomlinson (1977 – 2021 when not employed full time)
Practice areas: Small business and corporate, intellectual property licensing and counseling, entertainment and media, franchising, mediation, and arbitration
- Chief Legal Officer, ScribeRule, Inc., Houston, TX, 2018 – present (part-time)
- Attorney for D.H. Griffin of Texas, Inc., major demolition contractor (2010 – present)
- General Jurisdiction Faculty: National Judicial College, Reno, NV, 2014 – present
- Chief Legal Officer, Vendor Safe Technologies, LLC, Houston, TX, 2008 – 2015
- Clinical Professor of Law, UH Law Center, 2005 – 2008 (Contract Drafting & Negotiating)
- General Counsel, Int. Center for Entrepreneurial Development, Inc., Houston, TX, 2004 – 2005
- Adjunct Professor of Law, UH Law Center, 1997 – 2008 (Entertainment Law)
- Adjunct Professor of Law, South Texas College of Law, 1999 – 2000 (Entertainment Law/Mediation)
- Professor of Media Law, Texas A&M University, 1985 – 2004
- General Counsel, Country Music Television Network, Inc., Hendersonville, TN, 1983 – 1985
- Deputy Attorney General, Office of the Attorney General, Little Rock, AR, 1979 – 1981
- Assistant Attorney General, Office of the Attorney General, Little Rock, AR, 1978
- Special Deputy Prosecuting Attorney, Sixth Judicial District, Little Rock, AR, 1977 – 1978

Transactional:

Through the years and among many other types of contracts, I have negotiated and drafted thousands of agreements and business deals, including internationally in the UK, Germany, Mexico, Australia, New Zealand, most of the Middle East, and parts of North Africa, relating to very broad subject matter. To name a few: computer network security agreements; buy-sell agreements; patent licenses; trademark licenses; trade secrets agreements; sales contracts; vendor-vendee agreements; employment contracts; non-compete agreements; confidentiality and nondisclosure contracts; escrow agreements; contractor/subcontractor agreements; software development agreements; franchising agreements; oil & gas exploration agreements; insurance agreements; real estate contracts; lease agreements; fractional sales contracts; master services agreements; and settlement agreements. In the entertainment realm, I have negotiated and drafted contracts between: trademark and copyright licensors and licensees; songwriters and music publishers; artists and personal managers; independent record labels and recording artists, distributors, record producers, music publishers, and music video producers; independent film production companies and film-editing companies, music publishers, songwriters, and screenplay writers; television production companies and advertising agencies and talent; novelists and literary agents; authors and academic press publishers; co-songwriters; painters of fine art and purchasers (while retaining certain parts of the “bundle of rights”), cable television networks and performing rights organizations; cable television advertising producers and cable television companies and advertisers; and between acquiring companies and lyricists, composers, music producers, graphic artists, and computer animators relating to “work made for hire” and royalty agreements. I also have negotiated and drafted settlement agreements concerning book publishing and major-amount-in-controversy lawsuits between record labels, recording artists, music publishers, songwriters,

distributors, and others, and I have successfully prosecuted trademark applications. In decades of drafting contracts, I never have had any contract language litigated.

Arbitration/Mediation:

I have been an arbitrator since 1995. The many dozens of arbitrations I have conducted have involved intellectual property matters, personal injury, real property and construction disputes, disputes involving commercial general contractors, subcontractors, and sureties, debtor-creditor disputes, and securities disputes. Currently, several times per month I am arbitrating disputes for the National Arbitration Forum involving carrier members of the American Moving and Storage Association and the carriers' shippers (generally involving interstate moves for homeowners). Since 1991, I have mediated more than 900 disputes in Texas by appointment of state and federal judges and by direct attorney appointment. Disputes have involved multi-million-dollar amounts in controversy and virtually every field of law, including employment. I have received basic and advanced mediation training, I have conducted professional mediation training, and I have taught mediation as an adjunct professor of law at South Texas College of Law. I have represented clients at mediation and at arbitration. The Texas Mediator Credentialing Association has awarded me its highest designation, that of Credentialed Distinguished Mediator.

Litigation:

Between 1990 and 2004, I was involved as a litigation consultant (mostly on the plaintiff's side) in more than two dozen lawsuits concerning copyright infringement, libel, slander, privacy, newsgathering, advertising, free press/fair trial, journalism employment discrimination matters, and entertainment-industry disputes in state and/or federal courts in Texas, Louisiana, Florida, Virginia, New Mexico, Pennsylvania, New York, and Tennessee. Activities included case evaluation, state-of-the-law memoranda, pleadings, discovery preparation, mediation preparation, trial preparation, closing argument drafting, *amicus curiae* brief writing, and motions concerning change of venue, summary judgment, new trial, and judgment *n.o.v.* In 2006-2008, I was co-counsel in litigating a copyright infringement case against a quite large LA-based entertainment company resulting in a very significant settlement for the client. In 2010 and 2011, I appealed two civil cases to a Texas court of appeals and won reversal both times. In 2012, I was involved in an arbitration where my client was awarded \$400,000 and successfully defended \$2,000,000 in counterclaims. In 2014 and 2015, I filed two more successful arbitration claims for the same client, the awards totaling about \$150,000. One of these successful arbitration claims was contested in a Harris County, Texas, district court. It was affirmed and a judgment was awarded by the court. That judgment was appealed to the 14th Court of Appeals in Houston, Texas. The trial court's judgment was unanimously affirmed in January, 2017.

Expert Witnessing:

Between 1990 and 2004, I was a mass communication expert witness in more than 20 lawsuits involving libel, slander, plagiarism, privacy, newsgathering, advertising, and employment discrimination in state and/or federal courts in Texas, Louisiana, Florida, Virginia, and New Mexico. Activities included drafting expert reports, testifying at deposition, and testifying at trial.

Law Review Articles:

01. "Federal Versus State Jurisdiction and Limitations Versus Laches in Songwriter Disputes: The Split Among the Federal Circuits in *Let The Good Times Roll*, *Why Do Fools Fall In Love?*, and *Joy To The World*," 23 Loyola of Los Angeles Entertainment Law Review 101 (2002); republished by West Publishing in the 2003 Intellectual Property Law Review.
02. "Red Apples and Green Persimmons: A Comparative Analysis of Audio Home-Recording Laws Abroad and in the United States" (with Tim Nielander), 20 Mississippi College Law Review 5 (1999).
03. "Pardon Me, But You Got My Best Bits: Misappropriation of Personal Characteristics and the New Age of Privacy and Publicity Rights in Digitally-Manipulated Works" (with Tim Nielander), 20 Mississippi College Law Review 17 (1999).
04. "Intellectual Property in the Digital Age: The Piracy/Counterfeiting Problem and Antipiracy and Anticounterfeiting Measures," 8 Currents: International Trade Law Journal 3 (1999).
05. "*Unchained Melody*: Music Licensing in the Digital Age" (with Tim Nielander), 6 Texas Intellectual Property Law Journal 277 (1998).
06. "Everything That Glitters Is Not Gold: Songwriter-Music Publisher Agreements and Disagreements," 18 Hastings Communications and Entertainment Law Journal (COMM/ENT) 85 (1995).
07. "'Joe's Eatery' Versus Music Copyright Owners: No Pay, No Play?," 5 Texas Entertainment and Sports Law Journal (1995).
08. "People Do Read Large Ads: The Law of Advertising from Outer Space" (with co-author Rob L. Wiley), 47 Federal Communications Law Journal 535 (1995); republished at 18 Advertising Law Anthology 321 (1995).
09. "Journalism and Entertainment as Intellectual Property on the Information Superhighway: The Challenge of the Digital Domain," 6 Stanford Law & Policy Review 61 (1994).
10. "Free-Lance Photojournalism in a Digital World: Copyright, Lanham Act and *Droit Moral* Considerations Plus a *Sui Generis* Solution" (with Christopher R. Harris), 45 Federal Communications Law Journal 1 (1992).
11. "Expert Testimony in Private-Figure Libel Trials on the Issue of Negligence: A Developing Concept," 14 Communications and the Law 69-87 (1992).
12. "One Technological Step Forward and Two Legal Steps Back: Digitalization and Television Newscasters as Evidence and as Libel," 9 Loyola of Los Angeles Entertainment Law Journal 237 (1989).

Selected Other Published Materials:

01. “Contemporaneously Sought Dual Remedies: Arbitrating for Damages and Suing for Injunctive Relief,” *The Franchise Lawyer*, American Bar Association, 8-1 (Summer 2004).
02. “What is Reasonable: The Role of the Journalist Expert Witness,” 8 *Medialine: From the Bench to the Press — Media and the Law* 7-9 (1999-2000), a periodical publication of the Media Law Section of Corrs • Chambers • Westgarth, Lawyers, Melbourne, Australia.
03. “Libel in Cyberspace: New Medium, Same Law?” (with Rob L. Wiley), *Media Law and Defamation Torts Committee Newsletter*, American Bar Association, 5-2 (Spring 1998): 7-14.
04. “MMAR Group, Inc. v. Dow Jones & Co., Inc.: Post-Mortem on a \$222 Million Libel Verdict,” *Media Law and Defamation Torts Committee Newsletter*, ABA, 5-1 (Fall 1997/Winter 1998): 1, 7-11.
05. “Choosing Social Responsibility Over Law: The Soldier of Fortune Classified Advertising Cases,” Robert A. Larmer, ed., *Ethics in the Workplace*, Minneapolis: West Publishing Corp. (1996): 349-358; earlier version published at *Business and Professional Ethics Journal*, 9-1 (1990): 79-96.
06. *Computer Manipulation and Creation of Images and Sounds: Assessing the Impact*, The Annenberg Washington Program of Communications Policy Studies (Northwestern University), Washington, D.C., 57 pages, © 1993, Library of Congress call number PN4784.E53 C64 1993; republished in *The Annenberg Washington Program Electronic Library*, CD-ROM, © 1996.
07. “Where Morality and Law Diverge: Ethical Alternatives in the Soldier of Fortune Classified Advertising Cases,” *Journal of Mass Media Ethics*, 6-2 (1991): 69-82.

Selected Speeches/Presentations/Seminars:

01. “Dealing With the Media: Right, Wrong, and Otherwise...”
(seminar on courtroom media law and judicial media relations presented to groups of judges)
 - A. The National Judicial College, Reno, NV (semi-annually beginning in 2014 and to the present)
 - B. Arkansas Judicial Conference, Hot Springs, AR, June 11, 2009.
 - C. Harris County Judicial Education Conference, San Antonio, TX, July 28, 2008.
 - D. Ohio Judicial Conference, Newark, OH, June 19, 2008.
 - E. Ohio Judicial Conference, Dublin, OH, Feb. 28, 2008.
 - F. Ohio Judicial Conference, Dublin, OH, Feb. 7, 2008.
 - G. Georgia Institute of Continuing Judicial Education, Cordele, GA, Oct. 11, 2006.
 - H. Georgia Institute of Continuing Judicial Education, Athens, GA, March 23, 2006.
 - I. Texas Justice Court Training Center, Galveston, TX, Feb. 8, 2006.
 - J. Texas Justice Court Training Center, Austin, TX, Dec. 14, 2005.
 - K. Ohio Judicial Conference, Columbus, OH, Dec. 12, 2005.
 - L. American Corporate Counsel Association, Washington, D.C., Oct. 17, 2005.
 - M. Georgia Institute of Continuing Judicial Education, Athens, GA, April 21, 2005.
 - N. College for New Judges, Texas Center for the Judiciary, Galveston, TX, March 1, 2005.
 - O. College for New Judges, Texas Center for the Judiciary, Horseshoe Bay, TX, Jan. 27, 2005.
 - P. Texas Justice Court Training Center, San Antonio, TX, June 3, 2003.
 - Q. Interservice Military Judges Seminar, Maxwell Air Force Base, AL, April 22, 2002.

- R. Constitutional Officers Association of New Jersey, Atlantic City, NJ, Sept. 18, 2001.
- S. Washington State Judicial Association, Pasco, WA, May 7, 2001.
- T. The National College of Probate Judges, Las Vegas, NV, May 5, 2001.
- U. College for New Judges, Texas Center for the Judiciary, Dallas, TX, Dec. 6, 2000.
- V. College for New Judges, Texas Center for the Judiciary, Dallas, TX, Dec. 8, 1999.
- W. Arizona Judicial Conference, Phoenix, AZ, June 11, 1999.
- X. National Conference of Special Court Judges, ABA, Toronto, CA, Aug. 1, 1998.
02. "Copyright Law Update," Intellectual Property Law Section, State Bar of Texas, San Antonio, TX, March 3, 2006.
03. "The New Texas Business Organizations Code: Back to the Future," Texas Aggie Bar Association, College Station, TX, Feb. 25, 2006.
04. "Ownership of Computer-Generated Musical Compositions: Copyright at the Cutting Edge," Center for American and International Law, Plano, TX, Nov. 8, 2005.
05. "Jurisdiction, Limitations, and Laches in Songwriter Disputes: Why the Supreme Court Should Clear the Conflict in the Circuits," Intellectual Property Section, Dallas Bar Assoc., Dallas, TX, April 23, 2003.
06. "Copyright-Based Royalty Systems in the United States: Sometimes You Win, Sometimes You Lose, Good-Time Charlie's Got the Blues," Belize Bar Association, Belize City, Belize, August 22, 2002.
07. "Doing Due Diligence as a Private Equity Investment Analyst: Understanding and Using the Information-Gathering Methods of Journalism," JPMorgan Partners, New York, NY, August 9, 2002.
08. "Ethical Considerations for Entertainment Lawyers," Entertainment Law Section, Nashville Bar Association, Nashville, TN, Dec. 5, 2000.
09. "Reasonableness: The Role of the Expert Witness in U.S. Defamation Actions," Media, Communications, and Information Technology Law Interest Group, University of Melbourne School of Law, Melbourne, Australia, May 20, 1999.
10. "The World Wide Web Meets Lawyer Advertising Rules: The Improvidence of 'Borders' in the 21st Century," Tort and Insurance Practice Section, American Bar Association, La Jolla, CA, May 13, 1998.
11. "*Unchained Melody*: Music Licensing in the Digital Age," Intellectual Property Section, Hawaii Bar Association, Honolulu, HI, May 30, 1997; IP Section, Dallas Bar Association, April 25, 1997.
12. "The Information Superhighway, Privacy, and the First Amendment: Revolutionary Technological Change and its Impact," Science and Technology Section, ABA, Chicago, IL, August 5, 1995.

13. “The Computer Manipulation and Creation of Images and Sounds: Assessing the Downside,” convener of and principal speaker at one-day seminar, The Annenberg Washington Program of Communications Policy Studies (Northwestern University), Washington, D.C., Dec. 10, 1991.

14. “Digital Photojournalism: The Legal and Ethical Ramifications of Content Manipulation,” Presidential Showcase, American Bar Association, Atlanta, GA, August 9, 1991.

Non-Legal Professional Experience (1970-76):

- Adjunct Lecturer-in-Political Science, University of Arkansas at Little Rock, Little Rock, AR, 1980.
- Director of Public Information, Arkansas Department of Health, Little Rock, AR, 1975-76.
- Writer, Associated Press, Little Rock, AR, 1974.
- Reporter and Weekend Anchor, KTHV (CBS) and KATV (ABC), Little Rock, AR, 1972-74.
- Reporter, KTVE (NBC), El Dorado, AR, 1972.
- Adjunct Lecturer-in-Journalism, Arkansas State University, Beebe, AR, 1970-71, and University of Arkansas at Little Rock, Little Rock, AR, 1972-73 and 1979.
- Reporter, KAIT (ABC), Jonesboro, AR, 1970-71.