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THE PAPERLESS COURT OF APPEALS COMES OF AGE

Philip G. Espinosa*

I. INTRODUCTION

The future of totally virtual, or in more pragmatic terms, completely paperless appellate case management and decision processing, is now. Many articles have been written about this subject generally, and some in particular about the cutting-edge developments at Division Two of the Arizona Court of Appeals.¹ Numerous technological innovations over the last ten years have indeed brought about welcome changes and significant improvements in Division Two's accessibility for both appellate practitioners and the public. But new advancements within the court are even more remarkable, and could be described as a sea change in case processing and internal operations.

This article will provide an update on Division Two's progress over the last year, focusing on the court's new internal

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1. See e.g. Philip G. Espinosa, *A Word from the Future: The Virtually Paperless Court of Appeals*, 49 *Judges' Journal* 3 (Summer 2010) (describing history, implementation, and use of Division Two's paperless system); David Schanker, *E-Filing in State Appellate Courts: An Appraisal*, http://www.appellatecourtclerks.org/publications-reports/docs/NCA_CC_E-Filing_White_Paper.pdf (Natl. Conf. App. Ct. Clerks 2010) (analyzing slow adoption of e-filing in state courts) (accessed May 24, 2014; copy on file with *Journal of Appellate Practice & Process*); Philip G. Espinosa, *Appeals In Cyberspace and the Paperless Court of Appeals*, 7 *ABA Jud. Div. Record* 20 (Winter 2004) (discussing Division Two's first paperless system); see also Joseph Howard & Mohyeddin Abdulaziz, *Beyond e-Filing—Appellate Court Transformation*, <http://popup.ncsc.org/CTC2011-session-descriptions/~media/Microsites/Files/CTC2011/2011%20presentations/Beyond%20e-filing%20%20-%20CTC%202011-2.ashx> (Oct. 6, 2011) (describing nuts-and-bolts function of Division Two's paperless system) (accessed May 24, 2014; copy on file with *Journal of Appellate Practice and Process*).

case-management system, which has eliminated the last vestiges of paper in any part of our process, transforming the way we work. If you are wondering how this might relate to other courts or to your own, the answer is simple: Our system works so amazingly well, with attendant efficiency, convenience, and cost reduction, that no high-volume appellate court should be without it or something very similar.²

II. A QUICK TOUR OF THE NEW DIVISION TWO SYSTEM

It goes without saying that computerized case management is a necessity and the norm for probably every appellate court in the country. Division Two has been at the forefront of many e-initiatives over the past twelve years, including e-filing of almost all documents, even exhibits and court-reporter transcripts; the wholesale electronic transfer of records on appeal from our client courts throughout southern Arizona; and providing easy online access to all case information at every stage of decision processing for all Division Two legal writers and staff.³ But even appellate judges familiar with technology are likely to find something remarkable in Division Two's new system, which comprehensively integrates many discrete modules and automated processes (e-filing, document

2. Division Two is an intermediate appellate court with mandatory jurisdiction over civil and criminal appeals and discretionary jurisdiction in special actions (interlocutory appeals). Divisions One and Two share statewide jurisdiction but Division Two primarily hears appeals originating in five southern Arizona counties. In 2013, the six judges of Division Two handled and resolved 1046 appeals and related matters. See Arizona Judicial Branch, Statistics, *2013 Data Report*, <http://www.azcourts.gov/statistics/AnnualDataReports/2013DataReport.aspx> (scroll down to "Case Activity," then click on "Court of Appeals—Division Two" under "Appellate Courts") (accessed May 24, 2014; copy on file with Journal of Appellate Practice & Process).

3. See Roger A. Hanson, *American State Appellate Court Technology Diffusion*, 7 J. App. Prac. & Process 259, 269–71 (2005) (summarizing history and development of e-filing and court-to-court online transmission of trial-court record, and describing how Pima County Public Defender's office and Tucson office of Arizona Attorney General tested Division Two e-filing system prior to broader implementation); Philip G. Espinosa, *Appeals in Cyberspace: E-Filing at the Court of Appeals*, 38 Ariz. Atty. 22, 22 (Apr. 2002) (indicating that e-filing and "Blue-back" record transfer development were advanced by two-year pilot project with Tucson office of Arizona Attorney General and Pima County Legal Defender's Office); see also *Parker v. Parker*, 248 S.W.3d 523, 531 (Ark. App. 2007) (Griffen, J., concurring) (pointing to Division Two as progressive example of implementing electronic filing, and urging Arkansas courts to follow suit).

management, word processing, electronic conferencing, court orders, and final-decision processing) through one central access point: a simple online “dashboard” that looks the same every time I view it, no matter which device or location I am accessing it from, and which has revolutionized the work process of an already technically accomplished court.

A. Division Two’s caseDocs Dashboard and Where It Leads

| | |
|--|--|
| Arizona Court of Appeals Division Two caseDocs - Case Processing Judge Espinosa, Philip G. | |
| Decisions waiting approval: ✓ = you approved this decision. Cases will continue to appear here until approved by the 3 judges and Released . ✓ 2 CA-CR 2013-0317-PR - STATE OF ARIZONA v. MARK JONES ✓ 2 CA-CR 2013-0394-PR - STATE OF ARIZONA v. JOSE GARCIA | |
| <u>My Cases</u> | <u>Agenda Calendar</u> |
| <u>PJ/Clerk Review</u> | <u>Discussion Calendar</u> <u>*On-Hold Discussion Calendar*</u> |
| <u>Hide Notes</u> | <u>Oral Argument</u> |
| <u>XDocs (info & share center)</u> | <u>For Information Only</u> |
| <u>Final Decision Processing</u> | |

This straightforward dashboard display⁴ is now my daily starting point, usually via my office desktop, but just as easily called up on my laptop at home or on my tablet at the airport. In any of those locations, the only software needed is any one of the popular web browsers on every PC. Because the specific

4. All graphics in this article are derived from copyrighted images owned by the Arizona Court of Appeals, Division Two. They have been reduced in size for space considerations. The cases and comments included in them have been created for illustrative purposes and are not actual cases heard by the court or statements made by members of the court.

technology involved is nothing new and, for the most part, readily accessible, and since most of us are not technologists in any event, I will highlight and discuss only our internal working process—something we, as appellate judges, writers, and case managers, deal with on a daily basis.

You can see that some of this dashboard is self-explanatory. “My Cases” means just what it says. With one click of the mouse or touch on the tablet, my entire case list appears, accompanied by several interactive fields that can instantly bring up the procedural history and complete record on appeal for any matter, all related documents, and a list of any and all working drafts to date. Clicking on a draft opens it, and my chambers staff and I can view any and all drafts at any time, and at the same time if desired. Further, each draft carries automatic filename designations that at a glance identify its processing stage, for example, .draft (preliminary draft), .cc (cite-checked), .edit (edited by staff attorney), or .dist (distributed to panel). Each is automatically tracked to display its own history, development, and up-to-the-minute progress. This is an invaluable draft-management tool, particularly if, as in many high-volume courts, you are juggling numerous cases in various stages of the appellate process.

When a draft’s author is ready to distribute a proposed decision to his or her panel, the draft is, with a few simple clicks, uploaded to the Discussion Calendar for review by the two other judges, who can read the draft online, suggest edits, and leave comments. Thus, when I call up my password-protected dashboard each day, I routinely click on the Discussion Calendar field and can see every case and proposed decision that has been distributed. Historically, our panels had the practice of meeting once a week, laptops or tablets in hand, to review and discuss each case and uploaded draft on the calendar. Under the new system, however, our weekly conference time has evolved into merely a general deadline for disposing of the week’s calendar items online, with no physical meeting necessary. At that point, each judge has reviewed the case materials and each proposed decision, and has entered his or her responses, which run the gamut from complete agreement through specific suggested modifications to outright dissent.

However, if any member desires in-person discussion, the panel remains ready to meet on short notice.

Lest anyone think our court has done away with conferencing, the opposite is the case. Our panels' dialogues and interactions have become more frequent, unfettered as we now are by the need to meet physically; more precise, as comments preserved in writing tend to be more carefully thought-out, articulated, and supported; and more robust, as it is now easy to communicate ideas and positions when actually reviewing a case and related materials such as transcripts and legal authorities. And when the panels do meet face to face, the discourse is that much more informed, more efficient, and even more fun—at least if, like me, you love both the decisional process and collegiality of appellate work. And, I can report with confidence, these sentiments are wholeheartedly shared by all of my colleagues at Division Two.

Another aspect of caseDocs that has produced new efficiencies is the Oral Argument section of the dashboard.⁵ Accessing it takes one to a listing of recent cases pending argument or that already have been argued to the panels, and because Division Two has the unusual practice of preparing and distributing a pre-argument draft, the judges' respective proposed drafts of decision for each panel's review. It works much the same as the Discussion Calendar, but is geared to the slightly different type of case processing that deals with orally argued cases. As with most of our dashboard areas, a constant convenience and time-saver is the ever-present hyperlinks that can call up any part of the record or previously generated documents. There is also a field for each case in this section where the panels enter their comments. You can see the simple yet robust functionality of this part of the caseDocs interface in the depiction of the Oral Argument Calendar on the following pages.⁶

The Oral Argument Calendar also includes a "Post Arg" section, to which a case is automatically transferred after it has

5. See dashboard graphic, *supra* p. 101.

6. Although the demands of *The Journal's* print format require the graphics in this article to be rendered in black and white—and in the case of the Oral Argument Calendar, to be split across two pages—each displays on my computer in several informative colors and as a single screen.

been argued to the panel. It is here that the proposed draft decision is critiqued, edited, commented upon, and ultimately finalized by the panel. The panel members know who said what at every stage because the initials prefacing each entry identify the commentator as well as the date and time of the entry.⁷ Once all panel members have reached consensus and indicated approval, the case is transferred to the Final Decision Processing calendar (also available through a link on the dashboard⁸) for proofreading, electronic signatures, and automated distribution to all relevant recipients.

| Oral Argument Calendar | | | | | |
|------------------------|---|---|------------------------------------|----------------------|---|
| Filed By | Date | OA Date - Case Number | Case title | File - click to open | Action |
| Panel A | | | | | |
| Karen Rogers | | 4/23/2014 11:00 a.m. <u>2 CA-CR</u> <u>2012-0498</u> | STATE OF ARIZONA v. JONES | | Upload a document View All Documents |
| | DM 4/07/2014 15:58 = Judge Miller's case. Judge Brammer sitting for Judge Howard. BJ 4/10/2014 10:52 = Factual account looks accurate at this point. No other comments at the moment. WB 4/16/2014 16:13 = Ok - have provided a few editorial suggestions. Any thoughts about publishing? MOM 3/18/2014 08:09 = Changes look good. I am amenable to publication if draft holds up. Will wait for everyone's thoughts about it post argument. | | | | Edit Case Note |
| | KLR 4/11/2014 14:47 = This case is to be argued at the bar convention. Judge Espinosa sitting for Judge Howard. | | | | Edit Case Note |
| Panel B | | | | | |
| Darcy Meyer | | 4/30/2014 1:30pm <u>2 CA-CR</u> <u>2013-0177</u> | STATE OF ARIZONA v. ARMANDO GARCIA | | Upload a document View All Documents |
| | DM 3/12/2014 11:22 = Judge Espinosa's case; to be argued at Salpointe High School. | | | | Edit Case Note |

7. The initials "DM" in the dialog boxes of the Oral Argument Calendar indicate, for example, that my judicial assistant entered the comments associated with those initials.

8. See dashboard graphic, *supra* p. 101.

| Oral Argument Calendar (continued) | | | | | |
|---|--|--|--|--|---|
| Post Arg Calendar | | | | | |
| Panel B | | | | | |
| | | 4/30/2014 2:00 PM <u>2 CA-CV</u> <u>2013-0159</u> | SMITH v. JONES | | Upload a document View All Documents |
| | RK03/21/2014 17:38 = Judge Eckerstrom's case. Draft decision will be e-distributed to parties two weeks before o.a. | | | | Edit Case Note |
| Darcy Meyer | 03/28/2014 15:06 | 3/19/2014 3:00 p.m. <u>2 CA-CV</u> <u>2013-0208</u> | SMITH ENTERPRISE INC. v. PIMA COUNTY | CV2013- 208DraftDecision3.docx CV20130208Post Arg1.docx , [Check Out] | Upload a document View All Documents |
| | RK 3/04/2014 17:36 = Judge Espinosa's case. Judge Brammer sitting for Judge Vasquez. MOM 3/12/2014 08:49 = Sorry. I must recuse. PE 4/11/2014 3:27 = Have uploaded modified draft, per post-argument conference. Issue 2 has been modified as discussed. VCK 4/13/2014 10:22 = I think the changes work well. Offered one minor suggestion. | | | | Edit Case Note |
| Howard Joe | 04/17/2014 11:12 | 3/05/2014 2:00 pm <u>2 CA-CV</u> <u>2013-0126</u> | MORALES v. JONES, JR. | CV2013126DraftDecision4.docx , CV20130126Post Arg1.docx [Check Out] | Upload a document View All Documents |
| | RK 2/08/2014 16:34 = Judge Howard's case RK 2/09/2014 16:32 = Will be distributed to parties March 16. JH 4/17/2014 09:31 Revised post-argument draft uploaded. | | | | Edit Case Note |

Another busy area of our dashboard interface is the Agenda Calendar,⁹ where the clerk's office places motions, special actions (known in some jurisdictions as interlocutory appeals), fee requests, and anything else requiring an order of the court. Matters are listed here under their case names, accompanied by the pertinent pleadings and any earlier orders. Again, everything is hyperlinked and one click brings up any document for quick review. Most notable, however, is the comment field below each case name. The panel members, after review of the pertinent documents, use this feature to weigh in on the disposition of the issues involved. What results is a virtual chat room for appellate decisionmaking. Although these discussions do not ordinarily occur in real time, there is no need for that; the decisional

9. See dashboard graphic, *supra* p. 101; agenda-calendar graphic, *infra* p. 106.

process remains deliberative and thorough, with each judge carefully considering the readily accessible electronic record and his or her comments for the panel.

| Agenda Calendar | |
|---|--|
| Panel B | |
| 2 CA-SA 2014-0037 - JONES v. STATE OF ARIZONA | |
| Case File Pending Motion for Leave to File Amicus Curiae Brief | |
| ECK 4/10/2014 14:09 = This is an interesting, close case of state-wide importance and both the petitioner and state have asked us to grant jurisdiction to address its merits. I would vote to staff this, set oral argument and grant leave to file the amicus. VCK 4/10/2014 15:08 = I agree with Pete. PE 4/10/2014 18:14 = I concur in staffing this and permitting amicus. VCK 4/11/2014 9:05 = Referred to staff; will be Judge Espinosa's case. | Edit Case Note |
| Proceedings: | |
| Filed: Petition for Special Action. | 03/18/2014 |
| Filed: Appendix to Petition for Special Action. | 03/18/2014 |
| Filed: Transcript, Reporters Transcript of Proceedings, Transcript date: | 03/28/2014 |
| Filed: Response to Petition for Special Action. | 04/03/2014 |
| Filed: BRIEF OF AMICUS CURIAE ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF PETITIONER. | 04/06/2014 |
| Filed: MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF | 04/06/2014 |
| 2 CA-SA 2014-0031 - SMITH v. STATE OF ARIZONA | |
| Case File REPLY DUE 3/12/2014 - NOT FILED | |
| VCK 3/13/2014 14:14 = I see no reason to accept jurisdiction of this special action and vote to decline. ECK 3/13/2014 14:42 = The main argument is nothing more than an attorney complaining about an adverse jury verdict. I would decline on that issue. But I am concerned about the notice issue. Perhaps the full context of the trial court record better supports the court's ruling, but I would be interested in staff further investigating that question. I do think there is a serious notice problem if the issues one must contest at trial change after all the evidence has been presented but before closing arguments. PE 3/13/2014 15:29 = While Pete's point is not a trivial one, I think, at best, any error here would have been harmless. The def did not deny having taken drugs or having consumed alcohol and he was unconscious in his car when he was found by police. Thus, even had he put on an expert to dispute the state's evidence, it's highly unlikely such testimony could overcome the other evidence of impairment. Mr. Smith had his day in court and an appeal to the superior court and I would join Virginia in declining jurisdiction. | Edit Case Note |
| Proceedings: | |
| Filed: Petition for Special Action. | 02/24/2014 |
| Filed: Notice of Filing Exhibit to Petition for Special Action. | 02/24/2014 |
| Filed: Response to Special Action. | 03/06/2014 |
| Filed: Appendix To Petition For Special Action. | 03/06/2014 |
| Ruling: Please draft order declining jurisdiction | Enter/Edit Ruling |

One of the crowning achievements of our caseDocs system is the way it has streamlined the generation and processing of the court’s orders. For years now, Division Two, like many appellate courts around the country, no longer mails paper documents to parties, attorneys, and courts, having switched long ago to email attachments. But until recently, the final step in issuing an order was an enduring vestige of paper processing—a printed document delivered to the issuing judge for signature and then physically filed before being distributed electronically. That inefficient process has become a thing of the past, with all orders now generated, signed, and circulated through the dashboard link to “PJ/Clerk Review”— short for “Presiding Judge and Clerk Order Review”—which is just below “My Cases” on the left side of the dashboard.¹⁰ Clicking there brings up this page, which lists any orders that the clerk’s office has prepared for approval:

| Presiding Judge/Clerk Order Review | | | | | | | |
|--|----------------------------------|----------------|------------------|---------------------|---|--------------|---------|
| Case Number View ROA | Document Title | Review Date | Approved Date | Reviewer/ Queue | File | Action | |
| 2 CA-SA 2014-0007 JENNIE SOTO v. DAN A. SOTO | Order Re Special Action | 4/21/2014 | | Espinosa, Philip G. | PDF file: PJClerkEdits/154568.pdf | Make Changes | Approve |
| Let’s hold this order until the panel rules on the stay motion. – PE | | | | | | | |
| 2 CA-CV 2014-049 - BANK OF AMERICA N.A. v. ROSS | Order Re Dismiss & Miscellaneous | 4/21/2014 | | Espinosa, Philip G. | PDF file: PJClerkEdits/154554.pdf | Make Changes | Approve |
| Please revise 1st paragraph of the order to add a reference to the April 7 order. – PE | | | | | | | |

10. See dashboard graphic, *supra* p. 101.

At the PJ/Clerk Review page, the presiding judge can review the order for accuracy and make any desired changes before approving it, which serves as an electronic signature. The same process is used for routine orders that the clerk of the court is authorized to issue. And if a judge needs to review them at this stage, any relevant filings, as well as the entire record on appeal, are a mere click away.

There are several other modules of our caseDocs system and many more innovative features, but I will highlight only one more in the interest of brevity. Our most recent advance finally stamped out the last vestige of paper processing that the judges of Division Two, perhaps somewhat out of sentimentality, had been slow to discontinue: the physical signing of the court's opinions. It always seemed reassuring to see the actual pen-to-paper signatures of the panel members on the final draft to be filed with the clerk of the court, and there was some reluctance to let this go. But that age-old tradition actually wasted time and effort, particularly if the signature folder ended up sitting on one judge's desk when another judge could have been reviewing and signing the opinion inside. Now, clicking the new "Final Decision Processing" field¹¹ on the dashboard brings up a listing of all cases in which the opinions are ready to be signed and filed, along with quick links to every final draft, its entire history, and the full appellate record. Physical signing is no longer possible; instead, a judge clicks on "approve decision" and the display is instantly updated with an electronic check mark to reflect that judge's "signature." When all three judges have done so, a "ready to release" message is automatically generated and the decision is shortly thereafter transmitted to the various parties, attorneys, and offices waiting to receive it.

III. CONCLUSION: CASEDOCS (OR A SIMILAR SYSTEM) FOR EVERY COURT?

One of the best things about caseDocs is two-fold: It's not rocket science and it's very easy to use. Its dashboard interface simply coordinates standard, readily available networking and database tools, and the only visible software is any commonly

11. *See id.*

used Internet browser and standard document platforms such as Microsoft® Word and Adobe® Acrobat®. Our innovation lies in the forward-looking vision of our long-time information technology director, who has worked closely at every stage of the design process with judges and court staff. Over the years, he has gained an in-depth understanding of how the various components of an appellate court interact and accomplish their jobs. This has resulted in new ways to link existing software platforms and related technologies to conform to and enhance the court's already efficient procedures and workflow.

Other important aspects of caseDocs are its relatively low operating cost and the cost savings it generates in terms of increased labor efficiencies in our clerk's office, elimination of paper costs and handling, and time saved throughout the court. The clerk of court and I years ago calculated a conservative estimate of \$20,000.00 saved annually by our six-judge, thirty-four-staff-member court as a result of its pioneering use of technology. I am confident that this number has only increased with the advent of our caseDocs system.

Division Two is, in short, realizing great benefits from caseDocs, and is optimistic about its potential to continue adapting to any new challenges the court may face in the future. The new efficiencies I have been describing may raise another subject that could be worthy of an article of its own: Does all this virtual interaction, as opposed to face-to-face, in-person discussion, affect the decisional process of the panels? Or, for that matter, the collegiality of the Court as a whole? More study surely needs to be done, but I can say without hesitation that with most panel conferences now being conducted online, the fruits of our daily labor are more evident, informed, and effective than ever before, and our non-virtual face-time meetings are even more productive and collegial than ever, given that they are no longer a weekly routine. I would conclude that in our court, this "sea change" in improved technology and case processing has substantially streamlined our work without detracting from the professional interactions and relationships so important to the functioning of an appellate court.

I sign off by saying that should the members of any court wish to learn more about Division Two's caseDocs system, our IT director and I welcome inquiries. It is performing even

beyond our expectations and we are certain that caseDocs—or something like it—will work equally well for other appellate courts as they move towards an efficient and completely paperless electronic environment.

