

**Analysis of Professional Writing Practices of an Attorney**

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**ENGL 306-54: Business Writing**

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**(December 3, 2023)**

### Analysis of Professional Writing Practices of an Attorney

The purpose of the research is to analyze an attorney's professional writing practices and examine how an attorney neophyte develops authority and cultural capital to successfully enculturate in their field (Wardle, 2004) - challenging the assumption that mastery of persuasive legal writing is a skill developed and polished in law school. Firsthand experience - working for a judge and training his law clerks - made evident that new lawyers still had much to learn about legal writing. The law clerks discussed learning, within the bubble of academia, how to identify legal issues, conduct research, apply the law, and frame arguments (written analysis style known as IRAC – issue, rule, analysis, and conclusion). The interviewee, Sarah Cook, an attorney and colleague who completed two clerkships following law school, the goal of the interview - to gain a deeper understanding of how a law graduate bridges the writing gap and navigates the transition from academic writing to professional writing within the workplace.

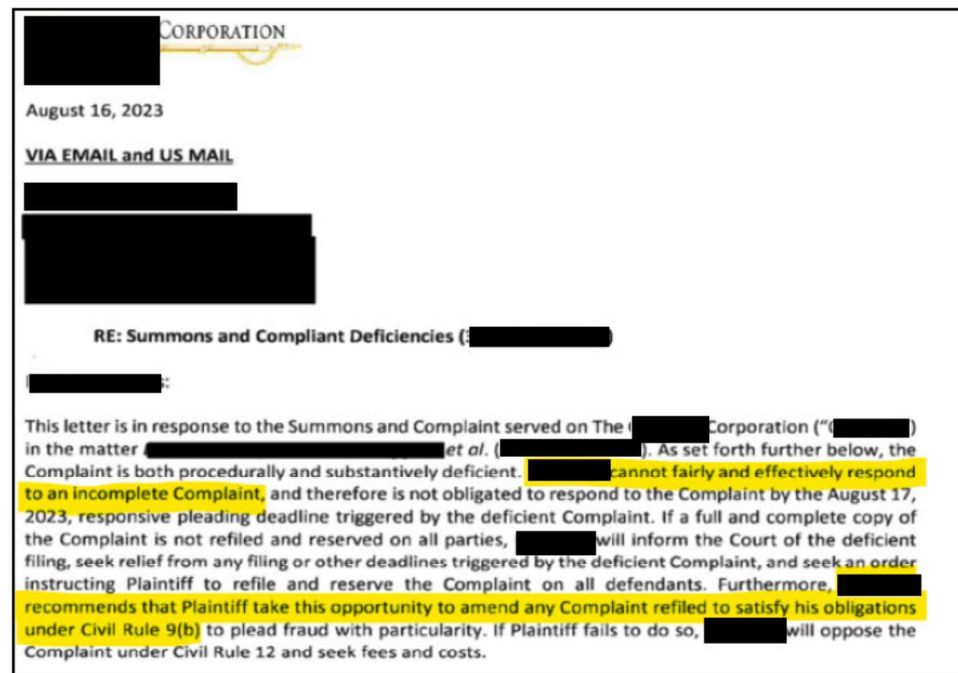


*Figure 1: Located 136 miles from Anchorage in Prince William Sound, invested in a business plan focused on federal government contracting following U.S. Congress enacting the Alaska Native Claims Settlement Act and the Exxon Valdez oil spill.*

Sarah clerked in Alaska for both a Superior Court Judge and a Supreme Court Justice; following these clerkships, she was a litigator at a private law firm. Presently, she is Deputy General Counsel for The Anchorage Corporation, an Alaska Native corporation engaged in government contracting (Figure 1). Another interview was with our boss, John, Senior Vice

President, Legal and General Counsel. Sarah shared three documents for the interview and document analysis: a business letter regarding a court case, a reply brief (with which I collaborated), and a Gen AI workplace use policy.

### Legal Letter Analysis



*Figure 2: Legal letter - Conveyance of logos by clear and concise subject line of the letter, which immediately identifies the intent.*

Sarah's client is the corporation, and while its shareholders are not her clients, protecting their interests is an aspect of the work focus. The first document Sarah shared is a letter on behalf of the corporation, one of the two named Defendant in a pending (estate) civil court case. The target audience is the Complainant and his attorney, but potentially, the Court will be the secondary audience. The letter aims to create a discourse and serve as a notice to opposing counsel that the corporation is not accepting service and its reason. All three rhetorical appeals (logos, ethos, and pathos) are at play with solid conveyance in this letter. Sarah uses logos by clearly presenting the legal argument at the beginning of the letter when she states, "Anchorage cannot fairly and effectively respond to an incomplete Complaint..." She uses ethos when she



focuses on substantive legal argument backed by civil rules of procedure, "... to amend [the Complaint] ... to satisfy obligations under Civil Rule 9(b)..." (Figure 2). She further establishes ethos with an error-free, polished document, and her word choice, "Anchorage recommends," demonstrates a professional tone and courtesy, a key component for establishing her credibility.

Plaintiff's behavior over the last year demonstrates the frivolousness and vexatious nature of his claims. First, Plaintiff filed his claims in probate court in August 2022, which lacked subject matter jurisdiction to hear the claims. Despite being informed of the lack of jurisdiction and provided with supporting case law, Plaintiff proceeded with the claim which was ultimately dismissed for lack of jurisdiction in January 2023. Plaintiff's failure to file his claims in the proper venue the first time around and his refusal to voluntarily move the claims to the correct venue cost the [REDACTED] Corporation over 6-months in attorney's fees, costs, time, and other resources. [REDACTED] has reserved its right to seek those fees.<sup>2</sup>

As noted above, [REDACTED] will not respond to the Complaint as filed and served and expects (1) Plaintiff will refile and reserve a full and complete copy of the Complaint with the Court and the defendants in the lawsuit and (2) Plaintiff will clarify with the Court that the proof of service filed on August 7 needs to be rescinded or otherwise amended. Furthermore, if Plaintiff intends to move forward with this lawsuit and refiles the Complaint without meeting the heightened pleading standard required by Civil Rule 9(b), [REDACTED] will move to dismiss the Complaint and will seek enhanced fees under Civil Rule 82(b)(3)(G) for Plaintiff's demonstrated vexatious and/or bad faith conduct in these lawsuits.

**Figure 3:** In the first paragraph shown (¶5 of the letter), ethos is conveyed concerning the prior court ruling and cites supporting civil rule. In the last sentence shown, Sarah uses pathos to appeal to the reader's emotions.

Sarah uses ethos when she references a prior court ruling on the same legal matter, "lacked subject matter jurisdiction [and the case] was ultimately dismissed" The reference to and law citation strengthens her argument and establishes credibility in her legal analysis. To convince the reader, she employs pathos to evoke a response that not only aligns with Sarah's purpose but also with the law, as shown in the last sentence in Figure 2, "Plaintiff's demonstrated vexatious and/or bad faith conduct in these lawsuits" is a common legal strategy used by attorneys in oral and written argument.

The artifact is representative of a business letter, structured to include the recipient's address, subject line, salutation, body of text, closing, writer's signature, and enclosures (Appendix A). Sarah explained that outside of the interview, there was minimal collaboration; she sent a few emails to John for feedback to ensure she maintained credibility in her tone and argument (Cook, 2023). A secondary effect of the ethos she builds in this artifact is establishing credibility within her work community by aligning her artifact to that of her employer, the

corporation, and protecting its shareholders' interests, thus establishing cultural capital (Wardle, 2004). During the interview, Sarah states:

[I will edit] everything I write, even with emails. I'll print and revise by hand with a red pen, then go to the electronic version and edit before I send (Cook, 2023, personal communication, October 4, 2023).

This well-established and practiced writing habit has served Sarah well in establishing authority in her field and supports Wardle's argument.

### Reply Brief Analysis

IN THE SUPERIOR COURT OF THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT [REDACTED]

In the Matter of the Estate of: )  
[REDACTED] )  
 )  
Decedent. ) Case No. [REDACTED]  
 )

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**THE [REDACTED] CORPORATION'S RESPONSE TO ESTATE  
ADMINISTRATOR'S BRIEF REGARDING JURISDICTION OF SUPERIOR  
COURT OVER DISPUTE AUTHORIZED BY ALASKA STATUTE 13.16.705**

The [REDACTED] Corporation ("[REDACTED]"), by and through its counsel of record,  
submits this timely response to [REDACTED] Brief Regarding Jurisdiction of Superior  
Court Over Dispute Authorized by Alaska Statute 13.16.705 ("Jurisdiction Brief").<sup>1</sup>  
Because this court sitting in probate does not have subject matter jurisdiction over the  
disposition of Alaska Native Corporation ("ANC") stock, it lacks the authority to  
adjudicate and provide any of the relief sought by Petitioner [REDACTED] in this matter.

*Figure 4: Reply brief - Conveying ethos in the document structure, legal jargon, and logos identifying the legal argument.*

The reply brief, filed in an estate matter and on behalf of the corporation, contested the distribution of stock will shares to only one of the Decedent's two adult children. The main legal issue was the venue. The corporation was not a party to the case but filed to be an Intervenor as the stock will shares at issue were one of its shareholders. The target audience is the Petitioner, a court-appointed Administrator of the Decedent's estate and a shareholder of The Anchorage

Corporation, the Petitioner's attorney, and the Court. The Court held a status hearing, and as Sarah explained during the interview:

[We] sat at the counsel table to raise the issue [of the] the case [filed in] the wrong venue. [Opposing counsel] disagreed, and the Court allowed us to submit a briefing with opposing counsel to file her brief first.

At the close of the hearing, the Court set due dates for briefing—the Petitioner would file the first brief, and Anchorage would file a reply brief (Appendix B). During court hearings, an attorney can establish or lose ethos (credibility) with the Court by their professional demeanor and dress. Sarah's professional demeanor was witnessed firsthand, as was the succinct delivery of her argument to the Court (Hankins, 2023).

In the reply brief, Sarah uses the rhetorical appeals of ethos in structuring her document to follow formatting guidelines (e.g., caption showing the Court, parties, and case number) and identifying its legal purpose with a substantive analysis by stating the relevant Alaska Statute (Figure 3). She uses logos to present a clear statement when she states, "this court sitting in probate does not have subject matter jurisdiction over the disposition of Alaska Native Corporation ("ANC") stock." Stating this within the first sentences allows the Court to see the purpose of the filing and the argument and legal authority, employing ethos and logs while guiding the reader's focus. It is crucial as the reader has the final say via court order. Firsthand knowledge of the inner workings of chambers prompts the judge or law clerk to look up that statute as they continue to read (Hankins, 2023).

Sarah employs pathos when she uses the statements: "the only logical reading of AS 13.16.705(a)" and "Civil Rule 12(h)(3) requires the court to dismiss[the] case" which is an appeal to the Court with a theme of justice. These statements are in separate sections of the artifact, but the power behind them is just as strong as it reiterates the message (Figure 5).

### **C. A Challenge to a Native Corporation's Testamentary Disposition of ANC Stock Must be Brought as a Civil Action**

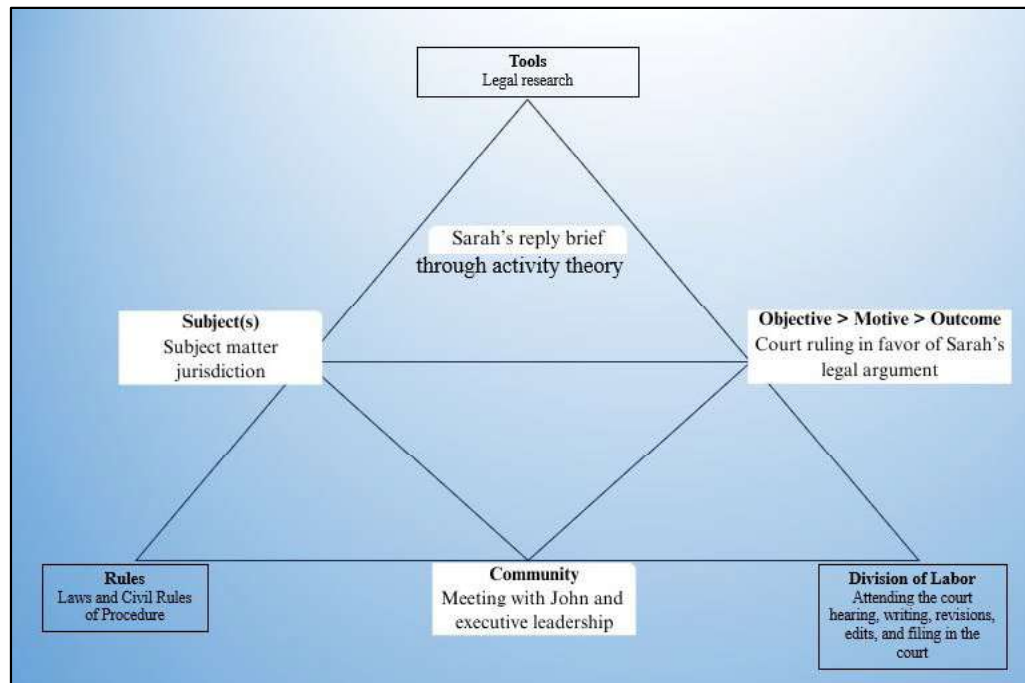
An individual who seeks to challenge an ANC's testamentary disposition of stock is not without legal recourse. AS 13.16.705(a) provides that "[i]n case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the superior court." Because ANC stock "is not subject to probate" and thus the probate court does not have subject matter jurisdiction over such an action, the only "independent action" that may be brought is a civil action in the superior court. Not only is this the only logical reading of AS 13.16.705(a), but it is also the only logical reading of Title 13 in its entirety because there cannot be multiple open probates of the same estate.

### **III. This Case Must Be Dismissed Pursuant to Civil Rule 12(h)(3)**

Civil Rule 12(h)(3) requires the court to dismiss a case "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction" (emphasis added).<sup>7</sup>

*Figure 5: See highlighted portion - Pathos is used to appeal to fairness and justice.*

During the interview, Sarah discussed the collaboration of the artifact, including in-person conversations and emails with John to identify the claim and legal issues to analyze and strategy. Following those meetings, she sent the first draft to John, who provided feedback regarding tone and clarity. Following revisions, Sarah emailed the artifact for copy edits, formatting, attaching a certificate of service, and e-filing with the Court (Cook, 2023).




*Figure 6: Wardle's Activity System – applied to Sarah's reply brief.*

In writing this artifact, Sarah engaged with the executive leadership to ensure that the reply brief would align with the corporation's standing. This engagement is what Wenger discusses as one of the interrelated modes of belonging (Wardle, 2004). The reply brief is an excellent example of Wardle's activity system: Subject (subject matter jurisdiction), Rules (laws and civil rules of procedure), Tools (legal research), Community (meeting with John and executive leadership), Division of Labor (collaboration, attending the court hearing, writing, revisions, edits, and filing with the Court), Object, Motive, and Outcome (court ruling in favor of Sarah's legal argument). Applying Wardle's theory shows the division of Sarah's labor and the non-writing actions Sarah employed to establish identity and authority in her workplace community when she met with executive leadership.



## GenAI Use Policy Analysis

 <b>CORPORATION</b>	<div style="text-align: right;"><b>Generative Artificial Intelligence (GenAI) Use Policy</b></div> <div>             Process Owner: _____              Approval Date: MM/DD/YYYY _____           </div> <div style="text-align: right;">Page 1 of 4</div>
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1. **PURPOSE**

The Anchorage Corporation ("Anchorage") recognizes that the use of generative artificial intelligence tools ("GenAI Tools") can increase employee productivity and innovation. Anchorage supports the use of GenAI Tools in a safe, ethical, responsible, and secure manner. At the same time, Anchorage recognizes the need to control the use of GenAI Tools to mitigate risks to its operations, reputation, and customers.

The primary difference between generative artificial intelligence ("GenAI") and traditional artificial intelligence (AI) lies in their objectives and functioning. While traditional AI aims to perform specific tasks based on predefined rules and patterns, GenAI goes beyond this limitation and strives to create entirely new data that resembles human-created content.

The purpose of this Generative Artificial Intelligence (GenAI) Use Policy ("Policy") is to provide guidelines for the responsible use of GenAI Tools while protecting Anchorage and mitigating the risk of misuse, unethical outcomes, potential biases, inaccuracies, and information security breaches.
2. **SCOPE**

This Policy applies to all Anchorage Stakeholders who use GenAI Tools for authorized business purposes, including in their dealings with Non-Anchorage Stakeholders and when using personal devices for authorized business purposes.

Non-Anchorage Stakeholders are encouraged to follow this Policy but are only required to inform their Anchorage Stakeholder point of contact in writing and in advance of using any GenAI Tool in or as a basis for any work product provided to or relied upon by a Anchorage Stakeholder.

*Figure 7: GenAI Use Policy—The first sentence conveys pathos and logos by defining GenAI and AI and the policy's purpose, scope, and ethos in using the corporate logo.*

Attorney writing varies to include workplace policies. The target audience is Anchorage employees, partners, vendors, and consultants, and as Sarah explained, the persuasive aim was to protect proprietary information to prevent loss of revenue (Cook, 2023). Employees received the policy by email with a link for the mandatory training. As the author, Sarah, chose language, "Anchorage recognizes that the use of GenAI increases employee productivity and innovation" (Figure 7). Sarah uses pathos as the persuasive aim is to appeal to the reader's emotion, stating the policy is not denying use and further employs logos by defining why the policy is essential with statements:

**Purpose** - Anchorage supports using GenAI tools, and the primary difference between GenAI and traditional AI... The purpose... is to provide guidelines for responsible use...while protecting Anchorage and **Scope**. The policy applies to all Anchorage stakeholders when using personal devices for authorized business purposes (Figure 7).

Sarah uses ethos by including the corporate logo in the header of each page, which is representative of a polished and professional workplace document.

As Sarah explains, collaboration took place over several months and included creating a committee, benchmarking what other corporations were doing, collecting feedback from departments to identify how employees use AI, creating a list of concerns, and developing implementation strategies (Cook, 2023).

In my professional experience, workplace policies have negative connotations, as they are often perceived as restrictive and punitive (Hankins, 2023). As learned in English 306, understanding context and audience is key to persuasive writing (Smith, 2023). Sarah demonstrates this understanding, which establishes credibility with the reader and highlights the importance of word placement. Ultimately, Anchorage wants to educate and provide guidelines and compliance while allowing employees room for creativity.

Sarah explained that this writing "[was] very different from a lot of my prior experiences" (Cook, 2023, personal communication, October 4, 2023). This statement is similar to Rose's theory, "as long as [the writer] encounter[s] new or unfamiliar life experiences that require or inspire writing," explaining that this is how a writer develops (Rose, 2015, p. 103). Taking on this writing initiative allowed Sarah to expand her writing genre and experience to effectuate growth.

### **Discussion & Secondary Research**

Sarah explained the pivotal moment in developing her writing and said she clerked for Justice Howard at the Alaska Supreme Court. She spent much time explaining the labor of writing in the appellate Court, the research process to produce the initial memo, and extensive revisions to achieve the most precise and concise information to form the Opinion. Her lengthy

discussion prompted research to find a parallel between the Supreme Court and Wardle's activity theory. Maryam Ahmed, a student from George Washington University, wrote an article highlighting the importance of enculturation, a set of common rules and mechanisms within a discourse community that possesses certain reoccurring texts and principles, and its members use these tools to collectively respond to rhetorical situations, thus shaping the history of our country. Her theory explained the importance of Americans understanding how the U.S. Supreme Court works within an activity system so we can better understand its legal rulings (Ahmed, 2017).

Sarah explained "the power of revision that Justice [Howard] instilled in me [to produce] a clear and concise document" (Cook, 2023, personal communication, October 4, 2023). This statement aligns with firsthand experience training law clerks and emphasizes the importance of a pivotal moment in transforming attorney writing. Writing that has the power to impact American history.

The goal of interviewing our boss, John Doe, a practicing attorney since the 1990s, was to understand how his experiences were similar to those of Sarah. He explained that in law school, all students took an Introduction to Research and Writing course that focused on technical writing, including format, blue-booking, and structural writing (how to organize a written argument logically). After that, it was all about practice, practice, and practice. Unlike Sarah, John did not clerk for a judge and described his true immersion into legal writing when he worked in private practice and spent time reading countless briefs written by opposing counsel. He describes that most briefs were sloppily written and unorganized, but it allowed him to focus his writing structure and keep his aim of the audience. He developed his writing practice by

focusing on arguments supported by competent authority, starting with the statement of argument:

Why [the] position was correct or why the opposing motion should be rejected [leading] the Court to that conclusion step-by-step and further states: the pivotal moment was when [the] court orders came back directly using portions of my argument in [its] written order (Doe, 2023).

He briefly described the mentorship he received from senior attorneys who reviewed his writings and provided feedback. When asked about rhetorical appeals, he answered with a quote often attributed to Winston Churchill, “I sit down to write you a long letter because I don’t have time to write a short one.” The summation of which he describes with the advice of:

[K]now precisely what your objective is and create a very logical roadmap for reaching that objective, such that you capture the audience's attention (and agreement) at the very beginning, and [then] lead them directly to your objective in a logical progression such that there is no 'off-ramp,' no point at which the reader can divert from your argument (Doe, personal communication, October 11, 2023).

John talked about writing briefs to the Alaska Supreme Court, the constraints created by court rules (e.g., font size, word, and page limit), and concise argument; there is a direct correlation to Winsor's discussion of constraints within writing which Wardle's activity theory can be applied in that John enculturated in his work community, established writing habits, rules of practices, tools for research, and discussed the division of labor within the law firm, with a focus on the object/motive/outcome in his target goal of persuasive argument. The takeaway from our conversation was that an attorney must commit to deliberate practice, much of it, to persuade and argue in writing effectively.

### **Conclusion**

The research findings revealed how truly diverse legal writing is and how an attorney’s post-graduate experience through mentorship and practice can transform writing to powerful,



polished, and effective artifacts. For Sarah, this was a clerkship with Justice Howard; for others, like John, this was a hybrid experience of self-teaching and workplace mentorship. Advice shared during the interview:

Seek out individuals who enjoy [giving their time in mentorship] and... sharing that time and expertise with you (Cook, personal communication, October 11, 2023).

For a neophyte attorney to successfully enculturate in their field, it depends entirely on the experiences they choose to immerse themselves in, which include mentorship and their dedication to deliberate practice on the road paved by determination.

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