



# RETHINKING ADMINISTRATIVE ADVOCACY: A STEP-BY-STEP APPROACH FROM FORMER GOVERNMENT INSIDERS

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In today's political climate, with frequent changes in leadership positions and new policy agendas, there has never been a better time to develop or brush up your administration advocacy skills to better achieve success for your client. At the same time, it is hard to define success from the outside looking in. That is why, as former government officials ourselves, we are sharing our perspectives to offer practical advice on interacting with government officials. We have had the benefit of attending numerous meetings addressing a variety of topics and witnessing the range of advocates' skill sets. We know what works because we have been there. This article offers concrete, step-by-step suggestions for how to improve interactions with federal officials and avoid common stumbling blocks.

The inherent federal nexus in Indian law means clients and practitioners are impacted by the political swings between presidential administrations—and the present moment is no exception. With the beginning of the Trump administration, practitioners face clients who are asking them to protect favorable prior decisions, navigate around negative ones, and look for new opportunities to gain traction on long-standing unresolved issues. There is a current perception that while certain topics might be off the table, others are merely awaiting the right advocate to come forward to make a case that will spur current government officials into action. Tribal advocates stand to achieve meaningful results for their clients and Indian country at large, but they must first frame the issue correctly.

Administrative advocacy is critical given that the federal government has broad discretionary authority on a wide range of topics concerning tribes and their citizens, lands, and resources. A myriad of federal statutes and regulations require federal agency involvement in, or approval of, tribal actions and policies. Based on those authorities, tribes frequently request federal engagement in, approval of, or support for their priorities or agreements, including economic development, forestry permits, oil and gas leases, ordinances, surface leases and rights of way, environmental issues, and education, among others. Although our advice focuses on the Department of the Interior, we recognize that tribal issues are as diverse as the federal family itself and tribal representatives are just

as likely to meet with officials from the Department of Justice (DOJ), Department of Agriculture, or the Environmental Protection Agency (EPA), to name a few. In addition, an appreciation for the Interior process can be helpful because agencies with less subject-matter expertise on tribal issues use the Interior's positions to guide their own decisions. The broader takeaways discussed here are meant to be applicable regardless of the specific agency with which you interact.

### Securing the Meeting

The stereotype of the federal government is that it has meetings for meetings' sake. The reality is that meetings can be an effective tool to brief federal decision-makers and gain insight into their thinking as they develop their positions. Meetings are also a frequent source of missed opportunities to frame your issue, ask for a specific action to be taken, and provide helpful background information to advance your client's goals. If you only have 30 minutes and you spend 25 going through introductions, you will have lost a chance to make any real progress. Yet, that is all too common. Meetings can unfortunately be used instead to repeat known information, posture in front of clients, and irritate the exact people whose help you are seeking.

The first thing you will want to consider when you want to request a meeting is timing. There is a delicate balance at play here. A meeting is most effective when it is neither premature nor

who is likely to do the work. For example, if you would like Bureau of Indian Affairs approval of a business lease, or an on-reservation fee-to-trust application, avoid the common assumption that you should meet with the bureau's assistant secretary of Indian affairs (AS-IA). Instead, try the local superintendent or program officer. If you have concerns about a trespassing issue on your client's lands or other legal issue you can reach out to the regional solicitor, rather than requesting a meeting with the solicitor's office in Washington. You can always elevate the issue if you are not making progress. Keep in mind that when anyone in the district receives a meeting request, congressional inquiry, or request for action, the first thing they will do is to reach out to the local and regional officials for background. You risk alienating the local, regional, and national officials if you do not start by addressing your concern locally.

In addition, remember that accomplishing goals often requires collaboration among agencies, such as the National Indian Gaming Commission and the Interior for Indian lands determinations, the EPA and the Interior for reservation boundary issues, and the Department of Transportation and the Interior for roads issues. On litigation questions that require the United States' involvement in litigation, such as an amicus brief or intervention, remember that both the DOJ and the federal agency with jurisdiction (most frequently, the Interior) will be involved. If you only meet with the DOJ, they will tell you they cannot proceed without a recommendation from a

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overdue. It is tempting to ask for a meeting as soon as an issue is identified, but effective meetings most often occur once the positions of interested parties have crystallized. A request or discussion based on too many assumptions or too much speculation is not likely to lead to meaningful results. The same is true if your client is seeking action on an item but has not yet submitted it. At the same time, remember that it takes time (often too much time) for meetings to be scheduled and decisions to be made. Thus, you should not wait until a week before a litigation deadline or a few days before you need a lease approved to make your request. Likewise, requesting a meeting during busy times—such as during the National Congress of American Indians, the Tribal Interior Budget Council, or other conferences—might reduce your chances for success. Meetings during peak times such as those will often only be scheduled for 25-minute blocks and commonly run late.

Once you have determined that a meeting is necessary, you will next need to decide with whom you should meet. The most productive meetings do not necessarily take place with the most important person. Locating an agency organizational chart and delegations of authority will help you identify the official closest to the issue and

federal agency. If you only meet with the Interior, they will tell you that they cannot act without the DOJ. Thus, you will need to meet with both agencies to make progress on your request, and a joint meeting can save resources.

There is a persistent temptation to leave the solicitor's office off of a meeting request, or even to specifically ask that they not attend. However, having the solicitor's office present to hear your firsthand analysis of sticky legal questions helps you avoid unnecessary delays. Many Interior documents, for example, must go through a "surname process," pursuant to which documents must receive approval from the offices or individuals with any responsibility for or involvement in the document. A solicitor's office "surname" is required on Federal Register notices, many decisions, congressional correspondence, and other documents. The surname process will move much more quickly if the solicitor's office is involved from the outset and does not raise any last-minute questions or red flags because they have not been briefed on an issue.

The most effective meeting requests are clear and upfront about their goals. Federal officials receive dozens of requests from tribes and their attorneys every day. Content matters. Government officials

appreciate when you take the time to explain your issue and why it is important and to note any pressing deadlines when you request to meet. Yet, requests are often submitted with little more than a generalized subject of the meeting, such as “trust acquisition,” or minimal details about the attendees or the request. Vague requests of that type deny officials the chance to familiarize themselves with your issue prior to your meeting. The reality is that time is a precious commodity. Following the meeting request process and providing sufficient information about the basis for the request is critical to securing a timely and productive meeting.

A meeting is not the best tool for accomplishing every objective, however. Often, with complicated legal or policy questions, a well-drafted letter is more effective in briefing an official on an issue and making a request. The best letters include an introduction that clearly states the purpose of the letter and any requests of the official. In such letters, the recipients do not have to wade through lengthy paragraphs to figure out what the author wants them to do; it is direct. Additionally, if an official only reads the first paragraph, he or she will understand the basis for the request and why it should be approved. The body of the letter should include a background section, a discussion section with appropriate citations, a contact person, a conclusion, and an invitation to schedule a meeting or conference call if necessary. The letter should be tailored to the audience—a letter to local officials already involved in any issue will not require the same background section as a letter to an official in Washington. A letter will avoid the expense of requesting, scheduling, and attending a meeting, and will avoid the need to rush through thorny legal or policy issues in a 30-minute block. It can also be a helpful way to thoughtfully introduce the officials to the issues and define your arguments.

## Preparation

If your meeting request is granted, ask for the names of the expected meeting attendees in order to tailor your message, keeping in mind the amount of background information attendees will have, their existing priorities/policies, and the relief that is within their authority to grant. Consider whether the official is an attorney or a policy person, whether the official is a career staffer or political appointee, or whether he or she has any Indian law background. You will also want to know how long the meeting will last.

Meetings that are preceded by proper preparation unfold much like a choreographed dance. Someone is charged with leading the agenda, and multiple speakers alternate without missing a beat. In contrast, unprepared attendees are easy to spot. Their group is not on the same page, has different requests, or the presenters talk over each other, leaving officials confused or frustrated. For those reasons, consider preparing for a meeting as you would a hearing or conference presentation, and do a moot presentation during which you should practice talking points and responding to difficult questions. A practice run will help identify any timing issues as well. For example, if you bring a 50-page PowerPoint presentation but find you can only cover 10 slides in 30 minutes, you will have time to adjust accordingly. On that note, visual aids are an easy way to demonstrate your preparation skills and cut down on the amount of talking you need to do. Maps are extremely helpful for matters such as fee-to-trust applications, realty issues, reservation boundary disputes, land claims, and taxation issues, among others. Charts or photographs can also situate things in concrete terms for officials.

## Delivery

Every interaction is an opportunity to make a great impression. This starts even before the meeting begins by ensuring a timely arrival. Many federal buildings have extensive security, including identification checks, metal detectors, and visitor badge requirements. Certain buildings are mazes of similar hallways, elevators that only go to certain floors, and dead-end stairwells. Plan to arrive at least 15 minutes early, particularly if a meeting is only calendared for 30 minutes, so no time is lost at security or trying to locate a conference room. In addition, ensure that you have the contact information of someone to call if you encounter difficulties. When you arrive, you can start by trading business cards to facilitate any follow-up after the meeting.

Once the meeting begins, have a clear request. Officials cannot take action if they do not understand what is being asked of them. Focus on providing solutions and resolving problems, not just identifying problems. For example, if the issue is that a state government is ignoring your concerns about a particular project the state is pursuing, do not just complain about the state. Rather, propose a specific solution, such as, “It would be helpful if the AS-IA could send a letter to the state on our behalf.” In that situation, you might even have an example of the letter you are requesting already drafted for the official’s review, bearing in mind that federal decision-makers will not use the same tone or arguments as a private or tribal attorney.

As the discussion heats up, your desire to advocate for your client and passion for the issue might leave your emotions running high. Keep it civil and be polite. We have seen more than a few attorneys who devoted their time to litigation posturing instead of focusing on meaningful discussion. One infamous individual raised his voice and slammed his fists on the table. That type of behavior only serves to end your meeting faster. Unprofessional behavior does not help your case and, in fact, distracts from it. You might also gain a bad reputation, making it harder for you to schedule your next meeting or be given the benefit of the doubt. With time in short supply, officials do not want to sit down with a person who will yell at them or otherwise make these interactions anything less than professional.

Being disciplined by sticking to your agenda when you have multiple issues to discuss will allow you to allocate your time wisely. Often, tribes will request a meeting to discuss two or more issues. However, at the actual meeting, all of the time may be spent on one issue, with no time left to cover the most pressing one. That problem can be avoided by preparing a carefully planned agenda that takes into account how much time to spend on each issue, the order of consideration, and the speakers. Furthermore, draft talking points ahead of time. If you walk into a meeting intending to improvise, you run the risk of missing issues or arguments. You might only have one meeting to make your case and inadequate preparation is a missed opportunity.

At the same time, come to the meeting with some flexibility to deviate from your talking points if the federal officials have particular interests or questions. Take some time for a couple deep breaths as you move from one topic to the next, to allow time for questions. If questions do arise, always give complete and honest answers, especially to the tough ones. We have seen numerous requests denied on the basis that the decision-maker did not have sufficient information. Sometimes, requests have been on the brink of approval only to discover that there was significant opposition or unanswered legal questions. Make sure to present the views of all stakeholders in an issue, even if you believe they are wrong.

Finally, end the meeting by agreeing upon action items, with—where possible—tasks assigned to specific individuals and deadlines. We have seen countless meetings end without any conclusion, meaning that no one understands or takes follow-up steps.

### Follow-Up

After your productive meeting, you can maintain momentum with strategic follow-up. Effective advocates might send an email thanking the officials who attended the meeting, summarizing what was agreed to, and offering to provide any additional information. Government officials will track whether they asked you for specific pieces of information during the meeting, and they will expect you to follow up with responses to questions you were asked, but perhaps did not have time or sufficient information to answer during the meeting. You will not make any progress if you merely repeat what you said at the meeting or in prior submissions. On the other hand, you will find yourself unintentionally delaying action on your request if you do not provide the requested follow-up. While threats and harassment are unacceptable, consistent polite calls or emails are both sufficient and necessary if your issue falls into the common yet dreaded vortex of remaining “in process” or “under review” long after any deadline or estimate timeframe has passed.

### Conclusion

The process of well-executed administration advocacy brings together preparation, strategy, and civility. This combination places you in the best light and ensures your client’s issue will move through the bureaucracy as efficiently as possible, instead of being moved to the bottom of someone’s inbox for the next administration to address. ☉



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