

Nebraska Tribal Courts & Child Welfare

Theresa Rachel

Attorney General, Omaha Tribe of Nebraska

Jonathan Seagrass

Managing Attorney, Legal Aid of Nebraska,
Native American Program

Who we are:

- Theresa Rachel

- Admitted to practice in Omaha & Winnebago Tribal Courts and Iowa State Courts.
- Current Attorney General & Acting Prosecutor/Juvenile Presenting Officer for the Omaha Tribe of Nebraska.
- Practicing since 2013.

- Jonathan Seagrass

- Admitted to practice in Omaha, Ponca, Santee Sioux, and Winnebago Tribal Courts, also Nebraska.
- Practicing since 2009.
- Current Managing Attorney of Legal Aid's Native American Program

Agenda

- Very short overview legal status of Native Nations.
- Tribal Courts in Nebraska & How to Become Licensed
- Overview of tribal child welfare
 - Similarities and Differences with state court practices
 - Unique Assets to support youth and families in tribal communities.

Legal Status of Native Nations

- Native American Tribes are inherently sovereign.
- Sources of law governing federal-tribal relationship:
 - U.S. Constitution
 - Treaties
 - Federal Statutes
 - Case Law

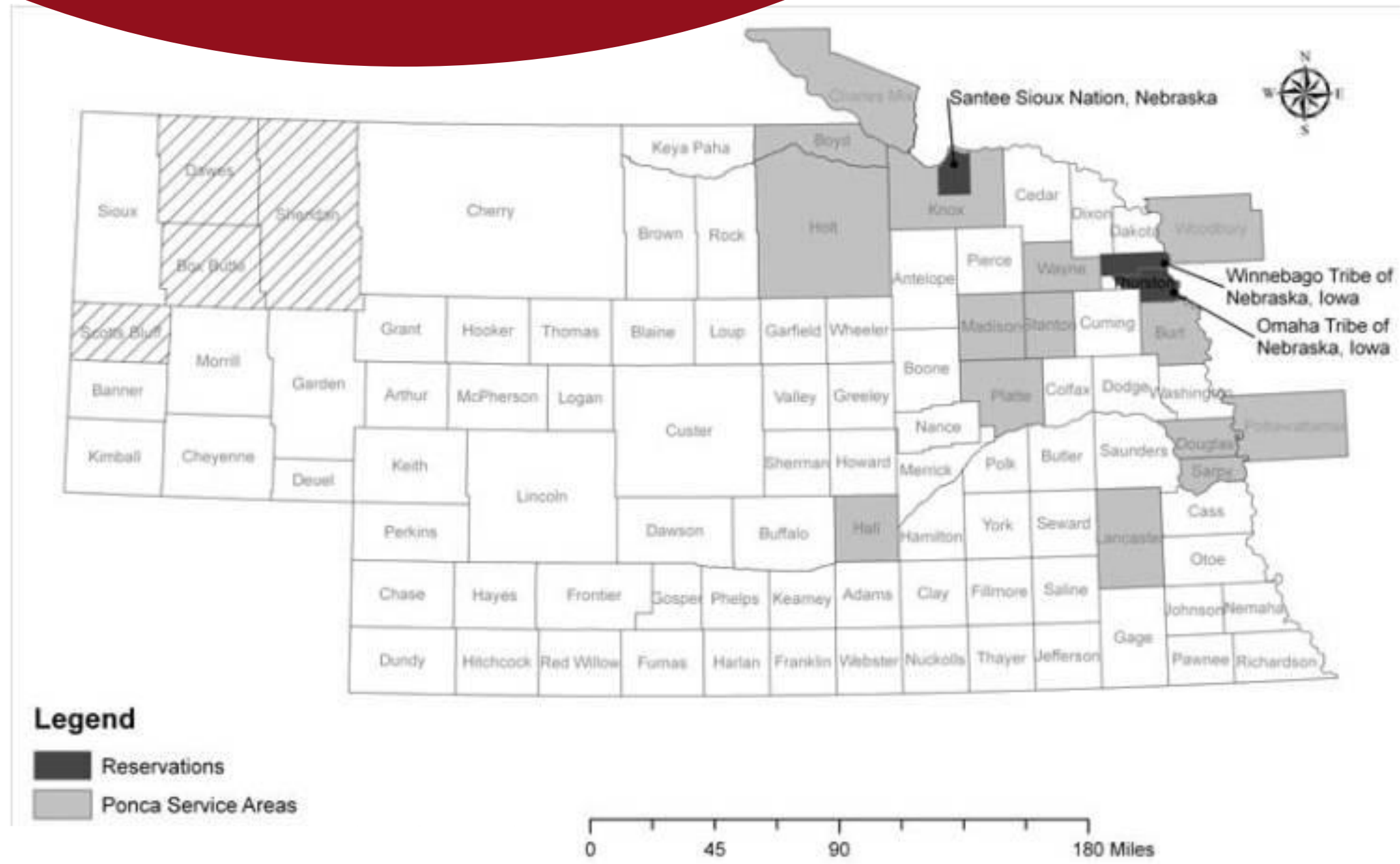
Tribal-Federal Relationship

- Federal “plenary” power
 - Generally to the exclusion of state authority.
- Government to Government relationship:
- Trust relationship and responsibility

Tribes in Nebraska:

- Omaha Tribe of Nebraska
- Ponca Tribe of Nebraska
- Santee Sioux Nation
- Winnebago Tribe of Nebraska

Tribes in Nebraska:



Tribal Courts in Nebraska

- Civil and Criminal Jurisdiction
 - Ponca – Civil Only
- Established pursuant to each Tribe's Constitution
 - Powers governed by each Tribe's Constitution and Tribal Code

Tribal Courts in Nebraska

- Constitutions and Tribal Codes often available online*:
 - Omaha Tribe of Nebraska: <https://www.omahatribe.com/public-documents/>
 - Ponca Tribe of Nebraska: <https://www.poncatribe-ne.org/tribal-documents/law-and-order-code/>
 - Santee Sioux Nation: http://www.narf.org/nill/codes/santee_sioux_nation/
 - Winnebago Tribe of Nebraska: <http://www.winnebagotribe.com/index.php/government/tribal-court>
 - *Check with Courts/Tribes for most up to date versions of Constitutions/Codes.
- Tribal Court Websites:
 - Ponca Tribal Court: <https://www.poncatribe-ne.org/services/tribal-court/>
 - Winnebago Tribal Court: <http://www.winnebagotribe.com/index.php/government/tribal-court>

Tribal Court Licensure Requirements

- Any attorney who is an active member in good standing:
 - Who submits an application,
 - Takes the oath required of attorneys,
 - Pays the admission fee.
- Lay Counsel
 - All tribal courts in Nebraska allow.
 - Specific requirements vary.
 - Application process the same as with attorneys.
- Pro Bono Requirement (Omaha, Santee, & Winnebago)

Tribal Court License Application Process

- IT IS SO EASY!
- Generally, to become licensed, you must:
 - Complete an application
 - Pay an admission fee (\$35 - \$100).
 - Include your bar card
- All Tribal Courts except Ponca, yearly renewals required.

Tribal Child Welfare and Juvenile Justice Codes, Policies, and Procedures

- The law governing tribal child welfare and juvenile justice cases is found in each Tribe's Code:
 - **Omaha Tribe of Nebraska**
 - Title 12
 - **Ponca Tribe of Nebraska**
 - Title 3
 - **Santee Sioux Nation**
 - Titles 4 & 5
 - **Winnebago Tribe of Nebraska**
 - Title 4

Tribal Child Welfare and Juvenile Justice Codes, Policies, and Procedures

- Each Tribe has a department generally mirroring the role NDHHS has in Nebraska state court juvenile cases.
 - **Omaha Tribe of Nebraska** > Omaha Tribal Child & Family Services
 - **Ponca Tribe of Nebraska** > Social Services Department
 - Does not presently exercise tribal court jurisdiction in juvenile cases.
 - Active in state court juvenile cases involving Ponca children.
 - **Santee Sioux Nation** > Dakota Tiwahe Service Unit
 - **Winnebago Tribe of Nebraska** > Winnebago Human Services > Child and Family Services Program

Tribal Child Welfare and Juvenile Justice Codes, Policies, and Procedures

- In some ways, life of the case is similar to Nebraska State Juvenile Courts.
 - Cases initiated by filing of Petition.
 - Motions for Immediate Ex Parte Custody.
 - Review of those orders
 - Initial Appearance > Adjudication > Disposition > Review > Permanency
 - Overarching standard is best interests of the child.

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jseagrass@legalaidofnebraska.org