

A Review of Common Legal Issues Arising in Landlord-Tenant Disputes

September & October 2011
Marion, Chapel Hill, Williamston and Wilmington, NC

Dona Lewandowski, School of Government

9:00	Summary Ejectment: Overview & Case Study	.5 hours
9:30	Procedural Issues in Summary Ejectment	1.0 hours
10:30	Break	
10:45	Essential Elements & Defenses	1.5 hours
12:15	Lunch	
1:30	Responding to Questions From Citizens: When and How	1.5 hours
3:00	Break	
3:15	A Defense That You May Be Overlooking: The Residential Rental Agreements Act	1.0 hours
4:15	Wrapping It Up	.75 hours
5:00	Time to Go Home	

(Total CEU credit for magistrates: 6.25 hrs)

NC Bar CLEs = 6

A REVIEW OF COMMON LEGAL ISSUES ARISING IN LANDLORD-TENANT DISPUTES

1. If the parties have a written lease, the landlord is required to produce a copy as evidence in order to win summary ejectment.

TRUE OR FALSE

2. In order to win summary ejectment based on failure to pay rent, a landlord must testify (1) to the words used in making demand, and (2) to the date of demand, in order to win summary ejectment.

TRUE OR FALSE

3. A tenant who rents a mobile home space is entitled to 60 days' notice before a writ of possession may be enforced against him or her.

TRUE OR FALSE

4. In some circumstances a tenant may successfully defend against a summary ejectment action even though the tenant admits to failure to pay rent, provided that the tenant is able to demonstrate that the condition of the premises violates the requirements of the Residential Rental Agreement Act.

TRUE OR FALSE

5. When service of process in a summary ejectment action is accomplished by posting, the landlord has no alternative but to give up any claim for money damages.

TRUE OR FALSE

6. When a tenant fails to appear in an action for summary ejectment, it's not necessary for the magistrate to complete the portion of the judgment form dealing with "undisputed rent."

TRUE OR FALSE

COMMON PROCEDURAL ISSUES IN LANDLORD-TENANT DISPUTES

Service of process

“The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant’s last known address in a stamped addressed envelope provided by the plaintiff The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return, showing compliance with this section.”

GS 42-29

Name of plaintiff

“The complaint in a small claims action shall be in writing, signed by the party or his attorney, except the complaint in an action for summary ejection may be signed by an agent for the plaintiff.” GS 7A-216

“In any small claim action demanding summary ejection or past due rent or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint.” GS 7A-223

“Every claim shall be prosecuted in the name of the real party in interest . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for . . . substitution of the real party in interest.” GS 1A-1, Rule 17.

In summary ejectment cases, the real party in interest is the owner of the property. (see cases cited in Brannon, p. 148, fn. 4.)

Judgment on the pleadings

Available only if all of following requirements are satisfied:

- Plaintiff requests J/P in open court.
- Defendant is not present in court.
- Plaintiff seeks only possession. (Money judgment is available, provided personal service, but plaintiff must offer evidence to get this.)
- On the complaint form, the “breach of lease condition” block is checked:

3. The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.
- The lease period ended on the above date and the defendant is holding over after the end of the lease period.
- The defendant breached the condition of the lease described below for which re-entry is specified.
- Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below.
-
-
-

Appeal

Notice of appeal must be given within 10 days.

Costs of appeal must be paid within 20 days.

Tenant may seek stay at any time prior to writ of possession being issued.

EXERCISE: PRETEND YOU'RE A CLERK

Amount due immediately:

Rent in arrears (undisputed amount due as of date of judgment, determined by magistrate) \$ _____

Note: indigency exception

Date judgment entered: _____

Date next rent payment due: _____

(If more than 5 working days later):

Was SE based on failure to pay rent?

If so,

Determine daily rent: \$ _____

Multiply by # of days until next rental payment: \$ _____

Total: \$ _____

Amount due subsequently:

Determine amount: \$ _____ (Note: PH rule)

Determine due date: \$ _____

Does the action satisfy the definition of “summary ejectment?”

“Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

- (1) When a tenant in possession of real estate holds over after his term has expired.
- (2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.”

GS 42-26

“In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, *there shall be implied a forfeiture* of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease.”

GS 42-3.

“Under this statute it is no longer necessary to allege that a landlord-tenant relationship exists between the parties as a jurisdictional matter, but it is still necessary to show that the relationship exists in order to bring the case within the provisions of this section before the summary ejectment remedy may be properly granted. *Chandler v. Savings and Loan Assoc.*, 24 N.C.App. 455, 211 S.E.2d 484 (1975). The remedy given by G.S. 42-26 is restricted to the case where the relation between the parties is simply that of landlord and tenant. *Hauser v. Morrison*, 146 N.C. 248, 59 S.E. 693 (1907). Furthermore, G.S. 42-26 was only intended to apply to a case in which the tenant entered into possession under some contract or lease, either actual or implied, with the supposed landlord, or with some person under whom the landlord claimed in privity, or where the tenant himself is in privity with some person who had so entered. *McCombs v. Wallace*, 66 N.C. 481 (1872).”

Jones v. Swain, 89 N.C. App. 663 (1988).

LIST YOUR OWN:

WHAT THE LANDLORD HAS TO PROVE

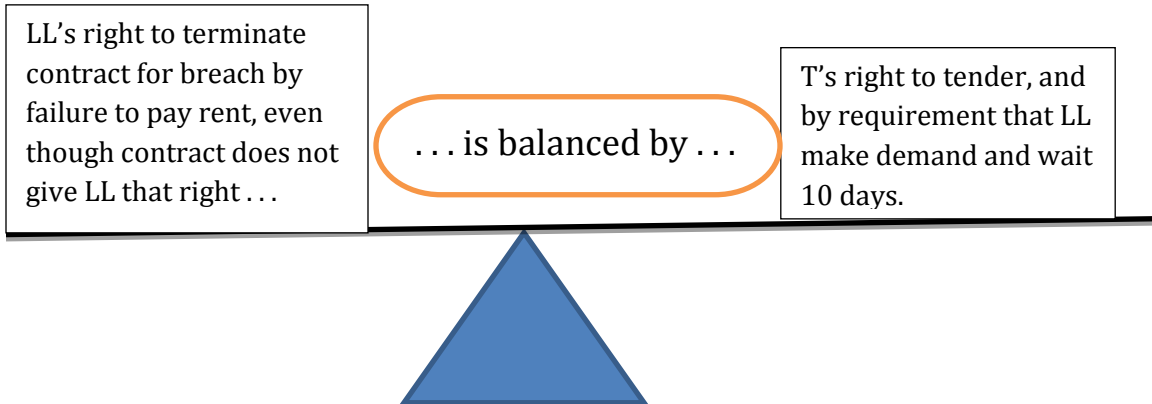
Exercise: Listen carefully to the following testimony. Does the landlord prove her case?

Judgment for ___ Landlord ___ Tenant

“[G.S. 42-3] was passed to protect landlords who made verbal or written leases and omitted in their contracts to make provision for re-entry on nonpayment of rent when due. The consequence was that often an insolvent lessee would avoid payment of rent, refuse to vacate, and stay on until his term expired.” *Ryan v. Reynolds*, 190 NC 563 (1925).

“[G.S. 42-33 (the tender statute)] was passed in the interest of the tenant. A landlord could bring an action after demand as required by the statute, when each installment of rent was due. The tenant had to pay the rent and cost before judgment or get out. This statute was to protect the tenant from hasty eviction, at the same time the landlord obtained his rent and cost. The two statutes construed together are just and equitable. The forfeiture which gives right of eviction in the present lease is made so purely by statute. The parties could have agreed in the lease upon strict terms as in *Midimis v. Murrell*, 189 N. C. 740, 128 S. E. 150. There the lessor and lessee agreed that the lessor had the option to declare the lease “null and void” upon failure to pay the rent. In the instant case the statutory forfeiture is saved by a statutory right to pay rent sued for and cost before judgment. The two statutes must be construed together, in *pari materia*.” *Id.*

IN OTHER WORDS,



What is required for effective tender?

ESSENTIAL ELEMENTS IN A SUMMARY EJECTION ACTION

BREACH OF A LEASE CONDITION :

Plaintiff/LL must prove:

- existence of a landlord-tenant relationship;
- lease contains a forfeiture clause;
- tenant breached lease condition for which forfeiture is specified;
- LL followed procedure set out in lease for declaring forfeiture and terminating the lease.

Most common defenses: failure to follow proper procedure, waiver

FAILURE TO PAY RENT:

Plaintiff/LL must prove:

- existence of a landlord-tenant relationship;
- terms of the lease related to obligation to pay rent;
- lease does NOT contain forfeiture clause;
- LL demanded that tenant pay rent on certain date;
- LL waited at least 10 days after demand to file this action;
- tenant has not yet paid the full amount due.

Most common defenses: failure to make proper demand and wait ten days, tender

HOLDING OVER:

Plaintiff/LL must prove:

- existence of a landlord-tenant relationship;
- terms of lease related to duration;
- if lease is not for a fixed term, that proper notice was given of intent to terminate.

Most common defenses: waiver, improper notice.

CRIMINAL ACTIVITY:

Plaintiff/LL must prove *one* of the following things:

- Criminal activity occurred within the rental unit;
- The rental unit was used to further criminal activity;
- Tenant, member of household, or guest engaged in criminal activity on the premises or in immediate vicinity;
- The tenant gave permission for a barred person to return to property;
- Where person barred from unit re-entered unit, tenant failed to notify LEO or LL.

Defense: T did not know or have reason to know of #1, #2, or #3.

T took all reasonable steps to prevent criminal activity.

Eviction would create serious injustice.

WARNING: The rules about eviction for criminal activity are especially complex, and you should read Brannon, pp. 178-187 closely before hearing this type of case.

HEARING THE CASE AND ENTERING JUDGMENT

What is the rule about deciding whether to admit evidence in small claims court?

Review

REMEMBER! A claim for possession and for money owed are two separate claims. If the plaintiff asks for both in the complaint, be sure your judgment addresses both. If you're uncertain whether the plaintiff intends to seek both remedies, clarify it and make certain the answer clearly appears in your judgment.

STATE OF NORTH CAROLINA		In The General Court Of Justice District Court Division-Small Claims	
_____ County			
This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.			
FINDINGS			
The Court finds that:			
42-30	1. <input type="checkbox"/> a. the plaintiff has proved the case by the greater weight of the evidence.		
	<input type="checkbox"/> b. the plaintiff has failed to prove the case by the greater weight of the evidence.		
	<input type="checkbox"/> c. the plaintiff requested and was entitled to a judgment for possession based on the pleading.		
	2. the defendant(s) <input type="checkbox"/> was <input type="checkbox"/> was not present. <input type="checkbox"/> The defendant was served by postings.		
3. <input type="checkbox"/> a. there is no dispute as to the amount of rent in arrears, and the amount is \$ _____.			
<input type="checkbox"/> b. there is an actual dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is \$ _____, and this amount is the undisputed amount of rent in arrears.			
4. other: _____			
ORDER			
It is ORDERED that:			
<input type="checkbox"/> 1. the defendant(s) be removed from and the plaintiff be put in possession of the premises described in the complaint.			
<input type="checkbox"/> 2. this action be dismissed with prejudice.			
<input type="checkbox"/> 3. this action be dismissed with prejudice because the defendant tendered the rent due and the court costs of this action.			
<input type="checkbox"/> 4. the plaintiff recover rent of the defendant(s) in the amount and at the rate listed below, plus other damages in the amount indicated. The plaintiff is also entitled to interest on the total principal sum from this date until the judgment is paid.			
<input type="checkbox"/> 5. other: (specify) _____			
<input type="checkbox"/> 6. costs of this action are taxed to the <input type="checkbox"/> plaintiff. <input type="checkbox"/> defendant.			
Rate Of Rent \$ _____ per <input type="checkbox"/> Mo. <input type="checkbox"/> Wk.		Amt. Of Rent In Arrears (Owed To Date) \$ _____	
Amount Of Other Damages \$ _____		<input type="checkbox"/> Judgment Announced And Signed In Open Court	
TOTAL AMOUNT \$ _____		Date _____	Signature Of Magistrate _____
		Name Of Party Announcing Appeal In Open Court _____	
		CERTIFICATION	
<i>(NOTE: To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.)</i>			
<i>I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.</i>			
Date _____		Signature Of Magistrate _____	

Questions

“My tenant moved out and left a bunch of stuff—looks like garbage mostly. Can I go in and clean it out?”

Answer: _____

“My tenant maybe moved out—I haven’t seen them around for a while. Can I just go in and look around to be sure they didn’t leave the stove on or nothing like that?”

Answer: _____

“My landlord turned off the power. Can he do that?”

Answer: _____

“I rent some property to this guy. The lease says he’s not allowed to sub-lease, but he’s moved out, and the people in it now say they leased it from him. Can I just tell them they’re trespassing?”

Answer: _____

“I let this woman move a mobile home onto some land I have—I let her rent the space. She’s long gone, but I still have this crappy trailer sitting on my property. How can I get rid of it?”

Answer: _____

“My landlord is refusing to fix anything—the air conditioning’s broken, and the washing machine doesn’t work. Can I just stop paying rent until he fixes things? If I go ahead and pay to have them fixed, does he have to reimburse me? Could I take it out of my rent money?”

Answer: _____

“I let a family member move in with me for a while, but we’re not getting along and I’d like him to move on. He’s refusing to move out—how I can I make him leave?”

Answer: _____

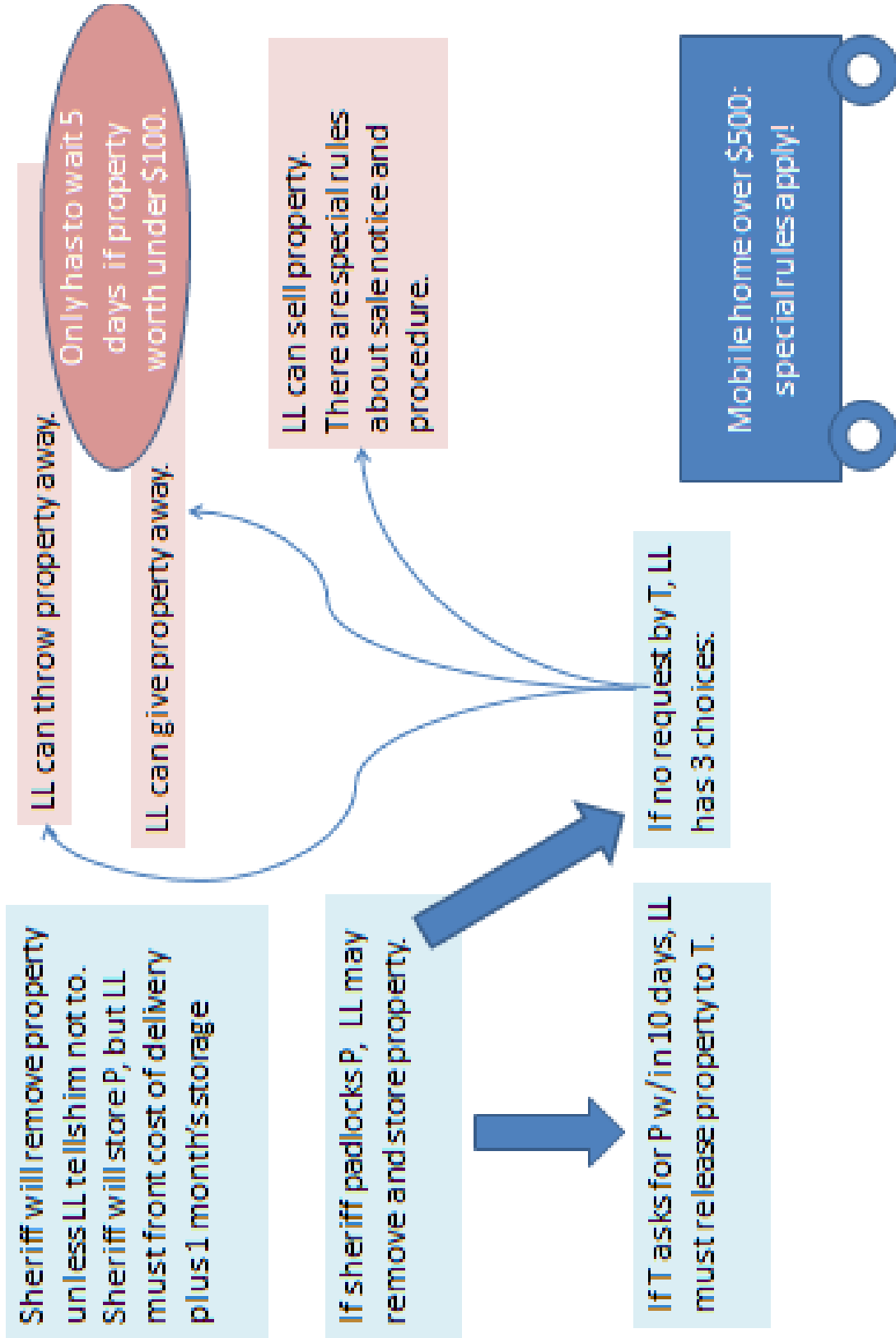
“My tenant is driving me and all my neighbors crazy. He plays loud music all night long, and has these parties with people staggering around drunk and peeing in the bushes. Can I evict him?”

Answer: _____

“I have a rent-to-own contract with this guy, and he’s stopped paying rent. Should I go criminal, or is that a civil kind of thing?”

Answer: _____

Tenant's Property



RENT ABATEMENT: EXAMPLE #1

Larry Landlord rents an apartment to Tommy Tenant. There is no written lease. Tommy pays \$600 rent on the first of each month. Larry files for summary ejectment based on failure to pay rent on March 15, based on Tommy's failure to pay rent for February and for March. You hear the case on March 25.

What essential elements must Larry prove to establish a prima facie case for summary ejectment?

1. _____
2. _____
3. _____
4. _____
5. _____

Imagine that Larry establishes a prima facie case, but Tommy's testimony is that the apartment has had no heat since he moved in, on Jan. 1st. He testifies that he notified Larry immediately of the problem, and Larry promised to fix it, but beyond providing a space heater, has taken no other steps to repair the heating system. Tommy tells you that he believes the apartment with a single space heater, rather than a central heating system, is worth only \$300 a month. He is prepared to tender the full amount due in order to maintain possession of the property.

Assuming you find Tommy's estimate credible, what amount must he tender? _____

	January	February	March
FRV	\$300	\$300	\$300
Amt pd by T	\$600	0	0
Balance	+\$300	0	-\$300

Assume that Tommy is not asking to remain in possession of the property, but that he is instead merely disputing the amount owed. What is your money judgment?

RENT ABATEMENT: EXAMPLE #2

Laura Landlord rents an apartment to Tammy Tenant. The written lease contains a forfeiture clause and requires Tammy to pay \$600 rent on the first of each month. Laura files for summary ejection based on breach of a lease condition on March 15, based on Tammy's failure to pay rent for February and for March. You hear the case on March 25.

What essential elements must Laura prove to establish a prima facie case for summary ejection based on breach of a lease condition?

1. _____
2. _____
3. _____
4. _____
5. _____

Imagine that Laura establishes a prima facie case, but Tammy's testimony is that the apartment has had no heat since she moved in, on Jan. 1st. She testifies that she notified Laura immediately of the problem, and Laura promised to fix it, but beyond providing a space heater, has taken no other steps to repair the heating system. Tammy tells you that she believes the apartment with a single space heater, rather than a central heating system, is worth only \$300 a month.

At what point, if any, did Tammy breach the lease? _____

	January	February	March
FRV	\$300	\$300	\$300
Amt pd by T	\$600	0	0
Balance	+\$300	0	-\$300

A Review Of Common Legal Issues Arising in Landlord-Tenant Disputes
McDowell County Judicial Training Center
Chapel Hill, NC
October 3, 2011

EVALUATION

Overall Program

	(strongly agree)			(strongly disagree)	
1. This training is important to me professionally; it was a good learning experience.	5	4	3	2	1
2. Overall, I think the information provided at this program will be very useful to me in my work.	5	4	3	2	1
3. The date, time, and location of the program were satisfactory	5	4	3	2	1
4. The facilities were satisfactory (parking, room, temperature, lunch, dinner, breaks, etc.)	5	4	3	2	1

Were there topics that should have been lengthened?

Were there topics that should have been shortened?

Were there topics that should have been deleted?

5. General Comments

Please use this space to tell us what you thought. Your feedback will be extremely important in designing the school when we offer it next time, so please help us out. How could we do it better?

Rate the Instructor

Please circle the number that best reflects your agreement with the items in the table below. The rating scale is:
SD = strongly disagree **D** = disagree **N** = neutral **A** = agree **SA** = strongly agree
(Circle **NA** in the last column if an item is not applicable.)

Dona Lewandowski	SD	D	N	A	SA	NA
introduced objectives and provided an overview of the program.	1	2	3	4	5	NA
presented content that supported the objectives.	1	2	3	4	5	NA
organized content logically.	1	2	3	4	5	NA
used clear examples and explanations.	1	2	3	4	5	NA
gave helpful responses to questions.	1	2	3	4	5	NA
provided relevant activities and exercises for practice.	1	2	3	4	5	NA
demonstrated energy and interest in the topic.	1	2	3	4	5	NA
reviewed key points.	1	2	3	4	5	NA
Handouts are helpful and will be useful in my work	1	2	3	4	5	NA