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Rule 23.5—Form 2: ***Trial Scheduling and Discovery Plan***

Do not file this form in an Expedited Civil Action case, instead use Form 3.

- This form is to be filed within 7 days after the parties' discovery conference and before the trial-setting conference with the court.
- The parties should complete the entire form except as otherwise indicated.

In the Iowa District Court for POLK **County**

NAVIGATOR HEARTLAND GREENWAY, LLC **Plaintiff(s) / Petitioner(s)** *Full name: first, middle, last* vs. IOWA UTILITIES BOARD **Defendant(s) / Respondent(s).** *Full name: first, middle, last*	No. EQCE088024 **Trial Scheduling and Discovery Plan** *Use of this form is mandatory* Date Petition filed: 09 / 07 / 2022 (mm / dd / yyyy) Case type: ☐ Law ☒ Equity ☐ Other ☐ PCR ☐ Judicial Review Trial type: ☐ Jury ☒ Nonjury Expected trial length: 2. days The amount in controversy exceeds $10,000. ☐ Yes ☒ No

Appearances:

Plaintiff(s) / Petitioner(s)

Brian P. Rickert, Samantha C. Norris, and Caitlin L. Stachon of BROWN, WINICK, GRAVES, GROSS, AND BASKERVILLE, P.L.C.

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Defendant(s) / Respondent(s)

Jon Tack and Diana S. Machir representing the Iowa Utilities Board

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It is ordered:

1. Trial *Note to parties: Unless you have obtained a trial date from court administration, leave this date blank; the court will enter the date after the trial-setting conference.*

Trial of this case is set for _____ (Month) _____ (Day), 20 _____ (Year), at _____:_____ (Time) ☐ a.m. ☐ p.m.

in the district court in the courthouse of the county named above.

2. Pretrial conference *Check one. Note to parties: If box* A *is checked, leave the date blank unless you have obtained a pretrial conference date from court administration. If you do not have a pretrial conference date and check box* A, *the court will enter the date, by order, after the trial-setting conference.*

A. ☐ A pretrial conference will be held on _____ (Month) ____ (Day), 20____ (Year), at _____:_____ (Time) ☐ a.m. ☐ p.m.

The conference may be held telephonically with prior approval of the court.

B. ☒ A pretrial conference will be held upon request.

If you need assistance to participate in court due to a disability, call the disability coordinator (information at https://www.iowacourts.gov/for-the-public/ada/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**

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3. New parties *List the time period or date when no new parties may be added.*

No new parties may be added later than 180 days before trial or by _____.

4. Transcripts and records

All required agency records or prior criminal transcripts will be filed within 30 days of the date of this Plan or by _____.

5. Pleadings *List the time period or date pleadings will be closed.*

Pleadings will be closed 60 days before trial or by_____.

6. Initial disclosures *Check all that apply*

A. ☐ The parties have exchanged initial disclosures.

B. ☒ The parties will provide initial disclosures no later than December 8, 2022.

C. ☐ The parties have stipulated that the following will not be included in initial disclosures:

_____

List items not included

_____

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D. ☐ The parties have stipulated not to provide any initial disclosures.

E. ☐ The following party objects to providing initial disclosures on the following grounds:

_____

Identify the party and state all applicable grounds

_____

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7. Discovery

The parties have held a discovery conference as required by Iowa Rule of Civil Procedure 1.507.

All written discovery will be served no later than 90 days before trial. All depositions will be completed no later than 60 days before trial. Or, all discovery will be completed by _____.

Check all that apply

A. ☐ No discovery of electronically stored information is expected in this case.

B. ☒ The parties have conferred about discovery of electronically stored information and reached agreement as set out in Attachment A.

C. ☐ The parties have conferred about discovery of electronically stored information and have been unable to reach an agreement. *Note to parties: If box* C *is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ /_____ /_____, at: _____:_____ ☐ a.m. ☐ p.m.
mm *dd* *yyyy* *Time*

☐ at the _____ County Courthouse, courtroom _____, or
County *Courtroom number*

☐ at the following location: _____.

D. ☐ The parties have agreed to a discovery plan, and their agreement is set forth in Attachment ___.

E. ☐ The parties have agreed to deviate from the limits on discovery otherwise applicable to this action, and their agreement is set forth in Attachment ___.

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F. ☐ The parties have agreed to conduct discovery in phases, and their agreement is set forth in Attachment ____.

G. ☐ The parties have reached an agreement under Iowa Rule of Evidence 5.502 as set forth in Attachment ____.

H. ☐ The parties have reached an agreement under Iowa Rule of Civil Procedure 1.504 as set forth in Attachment____.

I. ☐ The parties have conferred about a discovery plan and have been unable to reach agreement on the issues set forth in Attachment ____. *Note to parties: If box* I *is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ /_____ /_____, at: _____:_____ ☐ a.m. ☐ p.m.
mm *dd* *yyyy* *Time*

☐ at the _____ County Courthouse, courtroom _____, or
County *Courtroom number*

☐ at the following location: _____.

8. Expert witnesses

A. A party who intends to call an expert witness, including rebuttal expert witnesses, shall certify to the court and all other parties the expert's name, subject matter of expertise, and qualifications, within the following time period, unless the Iowa Code requires an earlier designation date (*see, e.g.,* Iowa Code section 668.11):

(1) Plaintiff: 210 days before trial or by June 1, 2023.

(2) Defendant/Third Party Plaintiff: 150 days before trial or by August 1, 2023.

(3) Third Party Defendant/Others/Rebuttal: 90 days before trial or by September 15, 2023.

B. Any disclosures required by Iowa Rule of Civil Procedure 1.500(2)(*b*) will be provided:
Check each that applies

(1) ☒ At the same time the expert is certified.

(2) ☐ According to the following schedule:

a. Plaintiff:____ days before trial or by _____.

b. Defendant/Third Party Plaintiff:____ days before trial or by _____.

c. Third Party Defendant/Others/Rebuttal:____ days before trial or by _____.

C. This section does not apply to court-appointed experts.

The deadlines listed in paragraphs 5, 6, 7, *and* 8 *may be amended, without further leave of court, by filing a Stipulated Amendment to this Plan listing the dates agreed upon and signed by all attorneys and self-represented litigants. Such Stipulated Amendment may not override any requirement of the Iowa Court Rules and cannot serve as a basis for a continuance of the trial date or affect the date for pretrial submissions.*

9. Pretrial submissions

At least **14 or** 7___ (the parties may enter another number but not less than **7**) **days before trial**, counsel for the parties and self-represented litigants must:

A. File a **witness and exhibit** list with the clerk of court, serve a copy on opposing counsel and self-represented litigants, and exchange exhibits. In electronic cases, witness and exhibit lists must be electronically filed, and the EDMS system will serve copies on all registered parties. Exhibits must be electronically submitted in lieu of exchanging them. These disclosures must include the following information about the evidence that the disclosing party may present at trial other than solely for impeachment:

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(1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying those the party expects to present and those the party may call if the need arises.

(2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.

(3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises. The following rules govern exhibits and exhibit lists:

a. Plaintiff will use numbers and Defendant will use letters. Pretrial exhibit lists will identify each exhibit by letter or number and description. Exhibits must be marked before trial.

b. Immediately before commencement of trial, the court must be provided with a bench copy, and the court reporter with a second copy, of the final exhibit list for use in recording the admission of evidence.

c. In nonjury cases, immediately before commencement of trial, parties must provide the court with a bench copy of all exhibits identified on the exhibit lists.

d. Within 7 days after the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial, counsel and self-represented litigants must file with the clerk of court, and serve on each party, any objections to the exhibits listed. In electronic cases, any objections will be electronically filed, and the EDMS system will serve copies on all registered parties. Electronic filing of these objections must be done within 7 days of the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial. An objection not so made, except for one under Iowa Rules of Evidence 5.402 or 5.403, is **waived** unless excused by the court for good cause.

B. File and serve **motions in limine**, with supporting legal authority.

C. File and serve **all proposed jury instructions** in a form to be presented to the jury, including a statement of the case, the stock jury instruction numbers, and verdict forms. The court must be provided the instructions in written form and electronically.

D. Deliver to the judge and serve a concise **trial brief** addressing factual, legal, and evidentiary issues, with citation to legal authorities.

10. Motions

All motions including motions for summary judgment and except motions in limine, must be filed with the clerk of court's office or electronically filed at https://www.iowacourts.state.ia.us/EFile/ at least 60 days before trial, with copies to the assigned judge.

11. Settlement conference

Note to parties: If A *or* B *is checked, leave any date blank; the court will fill in the settlement conference date after the trial-setting conference.*

A. ☐ A settlement conference will be held on _____ ____, 20___, at _____:_____ ☐ a.m. ☐ p.m.
Month *Day* *Year* *Time*

at the _____ County Courthouse.

All parties with authority to settle must be present.

B. ☐ A settlement conference will be held on _____ ____, 20___, at _____:_____ ☐ a.m. ☐ p.m.
Month *Day* *Year* *Time*

at the following location _____.

All parties with authority to settle must be present.

C. ☐ A settlement conference will occur at a date, time, and location arranged by the parties.

All parties with authority to settle must be present.

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D. ☒ A settlement conference will be held upon request.

The parties are encouraged to consider alternative dispute resolution including private mediation or arbitration.

12. Settlements

The parties are responsible for immediately notifying the court administrator of settlement.

13. Late settlement fees

Late settlement fees under Iowa Rule of Civil Procedure 1.909 are applicable.

14. Continuances

Continuances are discouraged and will only be granted for good cause. Motions to continue are governed by Iowa Rule of Civil Procedure 1.910. In the event the trial date is continued, all time deadlines in this Plan and any Stipulated Amendments remain in effect relative to the new trial date unless the court approves new deadlines.

15. Notice

Failure to comply with any of the provisions of this Plan or Stipulated Amendments to this Plan may result in the court imposing sanctions pursuant to Iowa Rule of Civil Procedure 1.602(5), including limitation and exclusion of evidence and witnesses and payment of costs or attorney fees. The court will resolve disputes regarding oral agreements on scheduling by reference to this Plan or any Stipulated Amendments to this Plan.

16. Other *List additional agreements of the parties for the Trial Scheduling and Discovery Plan*

At least one signature to the Trial Scheduling and Discovery Plan is required. The signer certifies that all listed parties have joined in this Trial Scheduling and Discovery Plan, subject to any objections noted.

I certify that all parties and attorneys to this action have agreed to this Trial Scheduling and Discovery Plan and have been served with a cop

November 01, 2022

Signed: Month Day Year

Party's or attorney's signature

Brian P. Rickert

Printed name

Brown, Winick, Graves, Gross, and Baskerville , P.L.C.

Attorney's law firm, if applicable

666 Grand Ave. Ste. 2000

Mailing address

Des Moines IA 50309

City State ZIP code

(515) 242-2457

Phone number

brian.rickert@brownwinick.com

Email address

brooke.johnson@brownwinick.com

Additional email address, if available

Original filed with the clerk of court or electronically filed at https://www.iowacourts.state.ia.us/EFile/.

Copies to: counsel of record, self-represented litigants, and court administration.

For questions regarding documents filed with the court in this case, please see https://www.iowacourts.state.ia.us/ESAWebApp/SelectFrame or call the clerk of court.

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