

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 PIERRE HASCHEFF, AN Case No. 86976
3 INDIVIDUAL,

4 Appellant/Cross-Appellant,

5 vs.

6 LYNDA HASCHEFF, AN
7 INDIVIDUAL,

8 Respondent/Cross-Appellant.

Electronically Filed
Nov 16 2023 03:34 PM
Elizabeth A. Brown
Clerk of Supreme Court

9 **APPENDIX TO APPELLANT’S OPENING BRIEF**

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1 **You're aware that Luke's motorcycle got**
2 **stolen?**

3 A Yes.

4 Q **And did you and Stan have to pay any money to**
5 **replace that motorcycle?**

6 A You know, actually I don't really recall the
7 motorcycle, and I don't really recall.

8 Q **Whether or not you had to repay for that?**

9 A Yeah. I don't recall that. Sorry.

10 Q **All right.**

11 THE COURT: Is this 23.24?

12 MR. ROBISON: It's stipulated in.

13 THE COURT: It's stipulated and it is now
14 admitted, Ms. Clerk.

15 COURT CLERK: Thank you.

16 (Exhibit 23.24 is admitted into evidence.)

17 BY MR. ROBISON:

18 Q **Mr. Jaksick, with respect to these various**
19 **issues that we've discussed in this case, have you still**
20 **done your best to honor your father's intent with**
21 **respect to providing Wendy that to which she's entitled?**

22 A Yes, I think that the trustees have done a
23 remarkable job getting the estate to where it is from
24 where it was.

1 Q Have you individually done so, sir?

2 A Yes, I've tried very hard.

3 Q To the best of your ability?

4 A I believe so.

5 Q Sincerely?

6 A Yes, sir.

7 MR. ROBISON: No further questions, your
8 Honor.

9 THE COURT: Thank you. Questions from
10 counsel. I was about to say I just want to go through
11 sequentially and then I'm about to call this redirect
12 which I think is the procedure of this particular trial
13 despite our party affirmation.

14 MR. LATTIN: Yes. And your Honor, Mr. Robison
15 and I have tried our best to combine our efforts so that
16 we don't keep the jury any longer than necessary. But I
17 do reserve my right on my case-in-chief to recall him,
18 if necessary.

19 THE COURT: Thank you. Mr. Spencer.

20 MR. SPENCER: Thank you, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SPENCER:

23 Q Do you know your father never would have
24 wanted Luke to be without health insurance. Right?

1 A Yes.

2 Q And the idea that he would be down in Texas
3 playing big-time high school football, maybe get some
4 scholarships and not have health insurance would be
5 upsetting to your father, wouldn't it?

6 A Yes.

7 Q Okay. And on Friday, I believe it was, you
8 testified regarding crediting some of the payments that
9 Wendy had received towards that note that she was owed.
10 Right? You recall that?

11 A Well, are we talking about the insurance
12 where Kevin Riley made the payment for Luke's insurance?

13 Q No, I'm not talking about insurance. I'm
14 talking about the -- I'm talking about the note -- or
15 you were talking about Wendy receiving payments and said
16 she got 500,000 dollars worth of -- or so worth of
17 payments. Do you recall that?

18 A Yes, I do.

19 Q And that she was owed a note and the payments
20 were credited against that note that she was owed.
21 Right?

22 A A portion of them were. There was -- yes, a
23 portion of those payments were credited towards the life
24 insurance note.

1 Q Right, the life insurance note. And what was
2 the balance of that?

3 A What time frame are you talking about?

4 Q When you were crediting Wendy's payments
5 against it.

6 A I believe it was in the neighborhood of about
7 231,000.

8 Q Right. So 231,000 of the payments that she
9 received she was owed anyway. Right?

10 A She was owed, but we were looking at her as a
11 priority payment as opposed to other life -- like there
12 was other life insurance notes we weren't paying, Stan
13 and myself, and we were paying her in advance of some of
14 the other creditors.

15 Q Why can't you just say yes to that question,
16 she was owed it anyway?

17 A Okay.

18 Q Right?

19 A Sure.

20 Q Okay. So that 500 and -- however much was
21 it, you remember don't you, how much was it? Do you
22 recall?

23 A In terms of recall what?

24 Q That how much in payments did Wendy receive

1 on a monthly basis over three and a half years?

2 A The total?

3 Q Yes.

4 A I remember somewhere seeing a figure of in
5 neighborhood about 591,000, but I believe that they were
6 missing some of the other payments that been paid, but I
7 -- that was the number I remember.

8 Q 591,000 dollars that she had received,
9 231,000 of which was owed to her. Correct?

10 A Yes.

11 Q And so -- and that was over what period of
12 time?

13 A I'd say from about 20 -- April of 2013 to
14 maybe 2017 or 2018, in there.

15 Q So towards the end of 2017 through to
16 possibly end of '18. Correct?

17 A I guess that could be the case. I'm not sure
18 I'm capturing everything in the 591, like I said, I
19 think there was more than that.

20 Q But it was after your father's death in April
21 of 2013. Correct?

22 A Yes. All that is after, correct.

23 Q All right. And so 2014, 2015, 2016, 2017,
24 that's four years, and then another seven months in

1 2013, and then potentially going into 2018. Right?

2 A Could be. I'm not exactly sure.

3 Q Okay. So we'll just take four years and
4 seven months worth of time. So four years would be 48
5 months. Right?

6 A Yes.

7 Q And then seven months on top of that would be
8 55?

9 A Okay.

10 Q So in 55 months she had received 360,000
11 dollars that would have been considered distributions
12 credited against her share.

13 A Yes, could be.

14 Q Okay. And that was all while you and Stan
15 were receiving benefits from being beneficiaries of the
16 trust. Right?

17 A Could you maybe explain a little bit more?
18 I'm not sure what you mean by that.

19 Q Well, you and Stan received benefits from the
20 Jaksick property, correct? The family property.

21 A Which Jaksick family property are you --

22 Q For various entities, family trusts, you're
23 the one in charge, you know the Jaksick family
24 properties, don't you?

1 A Yeah. I was just trying to see what you
2 meant by benefits. I didn't know you were talking about
3 trustee fees or.

4 Q You gonna tell everyone that you didn't
5 receive a benefit by being a trustee of the family
6 trust, a trustee of the issue trust, manager of all of
7 these various Jaksick entities, is that what you're
8 gonna testify to?

9 A I can't think of anything, but I -- I guess
10 it's possible.

11 Q You can't think of anything?

12 Your Honor, at this time I'd like to ask about
13 his property.

14 BY MR. SPENCER:

15 Q How large is your house, sir?

16 MR. ROBISON: Objection, your Honor,
17 relevance. If counsel asks specifically what he got?

18 THE COURT: Yeah.

19 MR. ROBISON: Then we'll go with it.

20 THE COURT: I'm actually thinking on for the
21 exchange that has been presented. I am not granting
22 leave to revisit my prior evidentiary decision.

23 BY MR. SPENCER:

24 Q Well, we know you got a three million dollar

1 construction loan, that's in the accountings. Correct?

2 A That is correct.

3 Q And that's construction loan was just to
4 build the house. Right?

5 A I think it rolled over to the same amount

6 Q Construction means to build. Right?

7 A Construction means to build. Dad wanted to
8 have a house out at the entrance of Montreux. He picked
9 a specific spot and he asked me to build a house there
10 to make a very nice in entrance into Montreux and that's
11 what I did.

12 Q And which address is that, the Rouge, Rouge
13 Drive?

14 A Yes.

15 Q All right. And then there was the other
16 property where the office was located. Right?

17 A Quail Rock?

18 Q Yes.

19 A Yes.

20 Q And that one was used as an office, but Wendy
21 lived in it for a time. Right?

22 A Yes, it was used as an office prior to dad
23 passing away. It was used as an office a year or so
24 after dad did pass away. And then we remodeled it and

1 had Wendy -- Wendy moved into it for a period of time.

2 Q Do you recall how long that was?

3 A I don't remember exactly when she went to
4 Vegas, but approximately a year or less, more or less.

5 Q Okay. And nothing wrong with Wendy using
6 some of the family property, is there?

7 A No, except for the only thing on that we were
8 happy to get her into there so she had a place to stay,
9 and then when she did move we did get that property sold
10 as quickly as we could.

11 Q Okay. And the -- earlier you testified that
12 Wendy got to use the Lake Tahoe property for 200 days as
13 compared to Stan's 150 and your 50 days.

14 A I think Stan's closer to between 90 and a
15 hundred.

16 Q I misstated, I apologize. Let me restate it.
17 Earlier you testified about Wendy stayed at Lake Tahoe
18 for 200 days and Stan about a hundred and you around 50
19 days.

20 A That sounds about accurate, yes.

21 Q But you recall after your father died Jennien
22 was living up at Lake Tahoe for a period of time.

23 Right?

24 A I do, yes.

1 Q And you and Stan were worried that she might
2 be taking things or destroying things at the house.

3 Correct?

4 A I don't believe that's the case on taking or
5 stealing things, though.

6 Q Okay. Destroying things is what I meant.

7 A I don't recall that either, no.

8 Q You sent Wendy up there to live at the house
9 with Jennien for five months, didn't you?

10 A I did not send Wendy up there.

11 Q Who did?

12 A It was a discussion that we all had. Jennien
13 was going back and forth between certain places and she
14 had her -- a gentleman that she had met that probably
15 towards, I'd say, November, December range periodically
16 stayed up there. And at the same time Wendy didn't have
17 any place to be so yes, Wendy, Luke, I believe Lexi was
18 staying up there, but Jennien wasn't frequenting there
19 that much.

20 Q All right. And five months is -- times 30
21 days, that's 150 days, isn't it?

22 A It is, but I don't believe that that initial
23 time frame was that much. I would say more in the two
24 to three months range is what I recall by max.

1 Q All right. But that was included in your
2 calculation, wasn't it?

3 A Those first couple of months, yes, are
4 included in my calculation of 200 days, yes.

5 Q All right. So Wendy and Luke were living up
6 there for a reason as opposed to just receiving the
7 benefit of living there. Right?

8 A I guess you could argue it was a combination
9 of both, but she didn't have any other place to be at
10 the time, so we had her staying up there as well. And
11 there was -- could be benefits to both sides.

12 Q Well, certainly, but you tried to make it
13 sound like she was getting all of this added extra
14 benefit that you and Stan did not receive, didn't you?

15 A Well, she did get to stay up there, I mean,
16 for that period of time for two-plus months during that
17 time frame.

18 Q At the request of your team. Right?

19 A I wouldn't say the request of our team, no,
20 it was a discussion between Stan and Wendy and I.

21 Q Okay. Not the team this time. All right.
22 So the -- and you testified, I believe you said that
23 Lake Tahoe is a tear down; is that right?

24 A My position on that is that most the people

1 that are looking for those expensive properties like
2 that, that's what they do. They buy those pieces of
3 property and they usually tear down these older homes
4 and build new homes. Yes, I would think that most --
5 most buyers if we had the house listed would be looking
6 to tear down the house.

7 **Q You're speculating about what a potential**
8 **buyer might to. Right?**

9 A I am, but just seeing what has happened up
10 there on the lakefront properties over the last 15 years
11 any time there's an older home like that, they usually
12 get torn down. And I think ours is probably one of the
13 last ones that hasn't been torn down. Sorry if I'm
14 looking at that wrong, but I just would estimate that
15 that's what probably somebody would do.

16 **Q But the house is nice, isn't it?**

17 A It's a beautiful home.

18 **Q All right. And in relation to the capital**
19 **call that you testified to earlier with Incline TSS, do**
20 **you remember that?**

21 A Yes.

22 **Q And you said that there were times**
23 **periodically where capital calls needed to be made.**
24 **Right?**

1 A Yes.

2 Q In Incline let me be clear, there's so many
3 entities. In the Incline entity. Right?

4 A Yes.

5 Q And you're the manager of Incline. Correct?

6 A Correct.

7 Q And that would mean that SSJ Issue Trust
8 would be one of the owners of Incline that would have
9 had to pay a capital call if it was required.

10 A Correct.

11 Q All right. And so that would have been you
12 putting one hat on, the manager of Incline TSS, and
13 negotiating with yourself by putting another hat on as
14 the trustee of the issue trust, and deciding well, let's
15 have a capital call. Right?

16 A Yes. If there's money needed we have to make
17 that decision.

18 Q So you negotiated a capital call as the
19 manager of Incline TSS with yourself as trustee of the
20 issue trust. Right?

21 A Based off of our operating budget, yes.

22 Q And you said that you'd received 250,000
23 dollars in rental income. And I believe you then said
24 you got about 200, was that the net number after paying

1 the real estate fee and all expenses?

2 A I apologize I don't have those numbers
3 memorized.

4 Q Well, you knew them a minute ago when Mr.
5 Robison was asking you questions.

6 A I was throwing out there, obviously, over
7 payments about 7,000 dollars a month. And so when you
8 add up that, plus the property taxes, plus some of the
9 operating expenses repairs in the house it approaches
10 200,000 dollars in expenses periodically.

11 Q Right. And that's not sufficient to cover
12 all the expenses, is it?

13 A It hasn't been, but we're getting closer and
14 closer to getting it where it is about covering the
15 expenses.

16 Q And you also testified that if the house,
17 Lake Tahoe house sold for 18 million dollars, then I
18 guess you'd have to deduct the 2.4 million with Bank of
19 America that's outstanding. Right?

20 A Yeah, they would get paid on the close,
21 correct.

22 Q All right. That would leave 15.7 million
23 dollars. Right?

24 A Yes.

1 Q And you said that boy, this was a really good
2 investment for the issue trust because of how much the
3 it would receive if that sale happened. Correct?

4 A Yes. I felt that the money has been safe
5 since we made the original investment, and yes, they
6 should be getting a decent return without a doubt.

7 Q Okay. But you didn't talk about the 46
8 percent that would be your trust that would likewise get
9 its share of that sales proceeds, did you?

10 A Correct.

11 Q So that would be of the 15.7 million dollars
12 if the house sold for 18 million, your trust, 46 percent
13 would receive 7,176,000 dollars of those proceeds.
14 Right?

15 A Under the current ownership structure, that
16 is correct.

17 Q And you pay -- not you, the trust paid
18 \$146,744.28. Right? Your trust did?

19 A Like I said, there's a lot more things that
20 are involved. That's what I -- my trust put in
21 initially as an initial option payments, and then we
22 assumed the debt obligation of the 7,250,000.

23 Q And we've seen that your trusts, at least in
24 relation to the purchase under the option, the amount

1 that it was sold was to be sold for, 7.25 million, was
2 reduced by the option payments. We saw that, right?

3 A Yes, the note was around 7.1, I think.

4 Q Making the note 7.1. And so notwithstanding
5 the need to figure out a way to pay for all of this debt
6 that had been assumed, out of your pocket you would have
7 gotten 7.176 million dollars for 150,000 dollar
8 investment. Right?

9 A Could you say that one again? I was really
10 confused on that.

11 Q The 46 percent of that 18 million dollar sale
12 after paying off the Bank of America --

13 A Okay.

14 Q -- loan would have netted 7.176 million on
15 146,000 dollar investment. Right?

16 A Yeah, I just don't look at it that way in
17 terms of the investment.

18 Q Well, we know what happened with the note.
19 Right? 7.1 million dollar note ended up in March of
20 2014 being paid out of the -- or at least 4.9 million
21 out of the insurance proceed received based upon your
22 father's death. Correct?

23 A Yes. I had a hundred percent of the company.
24 And I sold them 54 percent of the company, that is

1 correct.

2 Q Again, you were the buyer as you as the
3 manager Incline TSS were the seller, issue trust, you as
4 the trustee of the issue trust was the buyer, you were
5 dealing with yourself again. Correct?

6 A Companywise, entitywise, yes, but I involved
7 everybody else in the decisions.

8 Q The issue trust was your absolute and sole
9 discretion. You even testified you didn't need the
10 ACPA. Remember?

11 A That's what Bob LeGoy had indicated early on
12 that he didn't think we needed any documentation and I
13 thought that it was important to do so.

14 Q How were you gonna pay that 7.1 million
15 dollar note if Sam hadn't died and the proceeds hadn't
16 been available?

17 A Well, the main payment that we would had
18 starting year one in December was 159,000 dollar
19 interest-only payment. And that interest-only payment
20 was an obligation that went on for a period of ten
21 years. So dad had built in a lot of flexibility to make
22 the payments flexible for us so that we could cover the
23 payments and keep the purchase current, as well as the
24 fact as I've indicated before, the way that dad had laid

1 out the game plan was Stan got his gift into Montreux.
2 He was gonna sell some lots and buy back into Tahoe,
3 which is the reason why we have ACPA Number 10
4 structured the way that we do. It just took us a little
5 bit longer to get all the documentation and get that so
6 that was part of the money that was gonna come in, as
7 well as in December, of 2012, my dad is still alive.
8 Some of the options that we're looking at as we got a
9 purchase of the Bright Holland land, the Burning Man was
10 interested that we felt was gonna close before the year
11 2020. Duck lake was getting some funds from some
12 conservation easement. Bright Holland was getting some
13 funds from some conservation easement. And the game
14 plan was to do basically the same thing that we did with
15 the issue trust where the issue trust bought 54 percent,
16 we would have sold fractional interests to these other
17 -- some of these other entities to buy in to further
18 reduce that debt, and our goal was to get it down to
19 about three million dollars and/or more manageable
20 arrangement, annually, and that's how we would have done
21 it and could have done it.

22 Q And so you would have gone out and sold
23 property, gotten a conservation easement or gotten
24 property from other entities to pay off Incline's debt.

1 **Correct?**

2 A We were already doing that.

3 **Q Which automatically waters down and dilutes**
4 **the issue trust's interest. Correct?**

5 A No, I think your example was is that the
6 issue trust wasn't involved in the purchase. You were
7 wondering how we would have made the purchase if we
8 didn't use the life insurance proceeds. So I was -- the
9 issue trust wasn't in there, wouldn't have diluted them
10 at that point in time --

11 **Q You're right, I apologize.**

12 A It would I just continued to dilute me by
13 having other entities come in, Stan come in, Bright
14 Holland, Duck Lake. I could have funneled some fund
15 money back into my family trust, bought in more, paid
16 down more, Stan could have done the same. We had plenty
17 of avenues to be able to do all this and all the
18 transactions that I referenced were actually
19 transactions that were in the works at the time.

20 **Q And some or all of those entities were**
21 **entities that the family trust owned an interest in.**
22 **Right?**

23 A A few of them -- yes, a few of them would
24 have had some ownership in some of those, yes.

1 Q Some entities that you were in control of.

2 Right?

3 A Not necessarily, no.

4 Q Well --

5 A A few of them, but not all of them.

6 Q All right. And so, again, your -- as manager
7 of Incline TSS you're dealing with these other entities
8 that you control entering into deals with yourself to
9 make sure money gets put over into Incline to pay down
10 this debt. Right?

11 A Well, we didn't do any of that, but that was
12 the game plan that dad laid out while he was still alive
13 is this would be an approach to move forward with.

14 Q And your dad went from having the obligation
15 on the Bank of America mortgage to having that
16 obligation and having now this lease obligation to pay
17 back the Incline TSS doubling his obligations. Right?

18 A No.

19 Q Why not?

20 A Because dad was still on the 6.3 million
21 dollars in debt --

22 Q Yes.

23 A -- but Incline TSS, once we received the
24 rental payment, then Incline TSS was turning around and

1 paying the Bank of America directly, so if -- in 2012 if
2 dad was out of pocket \$22,000 a month for a payment, in
3 the going forward into 2013 he was still out of pocket,
4 it's the same amount, it did not double his monthly
5 amount.

6 **Q It would have if Incline had decided to use**
7 **the money elsewhere. Right? Because he would have**
8 **obligation on both the lease and the mortgage.**

9 A I'd have to review the Bank of America
10 documents. It's my understanding that what I recall is
11 that Incline TSS guaranteed the Bank of America that
12 Incline would making these payments, that it was
13 Incline's obligation, but I don't recall that exactly
14 right now.

15 **Q And you would not have been able to afford**
16 **the annual payments if you had not replaced page 2 of**
17 **the signed option agreement which is Exhibit 542 A.**
18 **Correct?**

19 A I didn't replace that. That was what was
20 agreed to early on, so that we could fund that, but the
21 discussions earlier on were if it was six percent of six
22 million, 6.3 million, that the interest-only payments
23 would have been 360-plus thousand dollars, versus what
24 they were at 159, and we knew right then unless that

1 debt was paid down that you couldn't -- that would have
2 been a much more difficult stretch to make that kind of
3 an interest-only payment. Not saying it was impossible,
4 but it was much more difficult.

5 **Q And your annual payment under that loan, the**
6 **note, unsecured note was less than your dad's annual**
7 **payments on the lease. Right?**

8 A The 159,000?

9 **Q Yes, sir.**

10 A That sounds accurate.

11 **Q 22,000 times twelve is more than 159,000.**
12 **Right?**

13 A Yes.

14 MR. SPENCER: I'm going to offer Exhibit 52,
15 your Honor. Stipulated.

16 THE COURT: 52 is admitted, Ms. Clerk.

17 MR. SPENCER: Let me make sure. Yes, it's
18 stipulated.

19 THE COURT: Okay. 52 is in.

20 (Exhibit 52 is admitted into evidence.)

21 BY MR. SPENCER:

22 **Q This was a memo that you received from Pierre**
23 **Hascheff June 1 of 2012. It references that the**
24 **interest payments at Bank of America on the 6.3 million**

1 dollar mortgage would convert to principal and interest
2 payments and substantially increase Sam's payments to
3 the bank and reduce his available cash flow. Do you
4 know when that was gonna happen?

5 A I believe that it was sometime in the latter
6 part of 2013, maybe early 2014, I don't -- can't tell
7 you the exact date. But it was definitely something
8 that was on everybody's radar screen to get this thing
9 refinanced as quickly as possible before that happened.

10 Q And Mr. Hascheff is providing tax liability
11 advice in this first paragraph, isn't he?

12 A Independent of where you have highlighted or
13 also?

14 Q I'm sorry, right under there where it says
15 "State tax liability going forward and also avoid the
16 500,000 dollar excise tax, to be applied in 2013 if the
17 sale occurs in 2013."

18 A Yes. These were -- I can't say whether he is
19 giving tax advice or whether he's summarizing what Kevin
20 Riley would have said in our discussions.

21 Q And then in the second paragraph what you
22 were alluding to earlier about these new affiliates
23 buying in would likely to be Toiyabe, generating cash
24 for Montreux, BHC from fly ranch, DLR, that's Duck Lake

1 **Ranch, in 2013 with conservation easements.**

2 A Yeah.

3 Q **See that?**

4 A I do, yeah. I didn't know we had that in
5 there, but yes.

6 Q **And so that was a communication between you,
7 Mr. Hascheff sent it to you and Mr. Riley. Correct?**

8 A Yes. Then Stan would have been involved in
9 those discussions regarding the Montreux lots at some
10 point in time.

11 Q **But this is -- it says at the top right
12 corner, scroll down, Keith.**

13 **"Attorney/client privileged communication" so
14 Stan was not included in this one, was he?**

15 A Must not have been in that email. I don't
16 see his name over there, no.

17 Q **And you also said that the trust was
18 consulting an attorney about bankruptcy. Right?**

19 A What time frame are you talking about?

20 Q **After your dad's death.**

21 A Before dad passed away and after dad passed
22 away, that is correct.

23 Q **And you understand as cotrustee if the family
24 trust pays all of its obligations, that -- including**

1 those under your indemnity agreement, that that would
2 wipe out the assets of the family trust. Would that be
3 true or not?

4 A I'm not sure. Could you explain that maybe a
5 little differently or ask it differently?

6 Q Is it your understanding that the liabilities
7 of the family trust outnumber the assets of the family
8 trust?

9 A At what time frame?

10 Q Well, in relation to the creditors' claims
11 against the family trust. You testified that the family
12 trust was not insolvent, didn't you?

13 A Yeah, I would say that we felt that at a
14 point in time when we were able to refinance or keep the
15 banks at bay in the first part of 2013 or so, that we
16 did feel that there was value in the estate at or around
17 the time that the creditor claims, I believe that to be
18 the case.

19 Q Including you indemnity agreement. Correct?

20 A I would file that as part of the creditor
21 claims, correct.

22 Q You certainly would have to determine the
23 scope and the breath of your indemnity agreement and
24 what it covered before you could make that assessment.

1 **Right?**

2 A Well, we knew what it covered because it
3 covered everything on Exhibit A.

4 **Q But that continued to morph over time as**
5 **things occurred. Right?**

6 A Well, for example, let's just take one of the
7 loans on Exhibit A, Buckhorn Land & Livestock. It was a
8 loan that was on the indemnification agreement for -- to
9 be indemnified for. But we sold the conservation
10 easement out at Buckhorn Land & Livestock which
11 generated enough cash to pay off those debt obligations
12 so, therefore, I didn't have to ask for any funds
13 associated with that Buckhorn Land & Livestock, per that
14 Exhibit A.

15 So I was just kind of giving you an example
16 that's why we were saying it was just unknown because we
17 were actively doing everything we could do to sell
18 lands, easements, generate cash flow in any way we could
19 to pay off those obligations so that we didn't have to
20 request funds to any huge degree from the family trust.

21 **Q And there was an outstanding balance in**
22 **relation to the Bronco Billy's investments, you**
23 **mentioned earlier the bank was thinking about making a**
24 **call on the loan because your dad died. Right?**

1 A Yes, they were.

2 Q That was six million dollars. Correct?

3 A I think it started out at ten and could have
4 been down to around six.

5 Q All right. And that was paid off once Bronco
6 Billy's sold. Right?

7 A Yes. The six was -- the six was paid off
8 from the sales proceeds of Bronco Billy's, that is
9 correct.

10 Q Yeah. And so the amount received was net of
11 the amount that was owed.

12 A Yes.

13 Q For the investment.

14 A Yes.

15 Q All right. And then six million dollars came
16 in from the life insurance proceeds on your father.
17 Right?

18 A Yes.

19 Q And then 6. --

20 MR. ROBISON: Let me object as to which life
21 insurance policy counsel's referring to. The insurance
22 policy or the issue policy?

23 MR. SPENCER: Yeah.

24 THE COURT: You have to clarify that, please,

1 Mr. Spencer.

2 MR. SPENCER: Sure.

3 BY MR. SPENCER:

4 Q And I'm talking about the six million dollars
5 that the issue trust received that were then used later
6 to buy Incline and pay off the note. Right?

7 A Yes.

8 Q And then there was 6.2 or 3 million dollars
9 that was received based on the Fly Geyser sale by Bright
10 Holland. Right?

11 A There was about 4.5.

12 Q That was the net; is that right?

13 A Yes.

14 Q Because there was a loan there as well that
15 you just mentioned. Correct?

16 A There was a lot of loans there, yes.

17 Q And then you testified there was 19 million
18 dollars in conservation easement money that was
19 received?

20 A Not necessarily received. It was -- a
21 portion of that was actually received and a portion of
22 it the federal government went to each property, they
23 haven't even completed it all yet to tell you the truth,
24 but they were going to do improvements on the land that

1 would increase the value of the property for stream
2 rehava -- rehabilitation, et cetera, so we didn't get
3 that 19 million that you're talking about.

4 Q Yeah. How much was received that was able to
5 be used to pay down debt?

6 A I'd say approximately 12.

7 Q Twelve? All right. And so part of that 33
8 million dollars that we've seen in this graphic which is
9 a demonstrative included that debt that was paid off in
10 relation to Bronco Billy's. Right?

11 A I believe so.

12 Q Okay. And six million from -- that was paid
13 Bronco Billy's -- you paid off the six million and
14 received how much? 6.3?

15 A That sounds about right, 6.3, and then we had
16 -- a couple million of that had to go to pay taxes.

17 Q And so you have 6.3 million from Bronco
18 Billy. Six million in life insurance proceeds in the
19 issue trust. You had 6.3 million from the Fly Geyser
20 sale that netted 4.5. And then 12 million in cash that
21 came in from the conservation easements. Correct?

22 A I'm not totally sure, but it sounds about
23 right.

24 Q That's 29, according to my calculation, 29.2

1 million dollars that came in after your father died.

2 A Okay.

3 Q Okay. And so -- and those were things that
4 were done either as a matter of course in the
5 transactions or to generate income from property that
6 was owned by the Jaksick family interests. Right?

7 A Yes, we were doing anything we could to be
8 able to generate cash flow, that's correct.

9 Q Generating cash flow, but as opposed to going
10 out and earning or generating some sort of income from
11 an investment or some great deal that you worked that
12 brought in a whole bunch of new money. Right?

13 A No, these were very difficult transactions
14 and took a tremendous amount of time that were new deals
15 that we were putting together those conservation
16 easements, land, some land sales, um, I mean, we were
17 working on this thing nonstop. And those numbers that
18 you're talking about don't take into consideration debt
19 that's paid on each individual transaction or interest
20 carry annually on each loan, I mean, there's a
21 tremendous amount of factors.

22 Q Well, and so all this debt that's been paid
23 down, you know, patting yourself on the back when you
24 paid it down came from money that -- and property that

1 was already owned by the Jaksicks. Correct? And their
2 entities.

3 A A lot of it, yes, that's -- uh-hum.

4 Q And you did a 1031 exchange with Mr. Jamison,
5 that was a swap. Correct? That got rid of that debt.

6 A Yes, we did do a 1031 debt.

7 Q And that credit was used to buy properties
8 that are still owned and it has been paid down with some
9 of that money. Right?

10 A Yes, a lot -- yeah, there's been quite a bit
11 of it's been sold for sure.

12 Q Met Life has been used to pay down debts as
13 well. I'm sorry, the Jaksick family value and entities
14 have paid down some of the Met Life debt as well.
15 Right?

16 A We have largely through conservation
17 easements, as well as selling some of the interest to
18 partners.

19 Q And you mentioned in relation to Jack Rabbit
20 that Mr. Satre invested two million dollars. Correct?

21 A Yes.

22 Q And that paid down the debt, didn't it?

23 A Yes, it did.

24 Q And --

1 A Or -- yes, it did.

2 Q And the Billson Durham debt has been paid
3 down as well. You paid off, I mean, as a settlement.

4 A I don't recall it being a settlement. I just
5 recall it being -- paying them the full amount due of
6 approximately two million.

7 Q And you had personal interests in many of
8 those entities where that debt was paid off, and you and
9 your trust got the benefit of that. Right?

10 A We all got the benefit of it, all our
11 interests were in line if we sold an easement within
12 other entity and we reduced the debt, everybody
13 benefits.

14 Q Sir, you certainly understand that many of
15 these entities you own you or your trust own 51 percent
16 every. Right?

17 A Some of the ones that you just brought up,
18 no, that's not the case.

19 Q Are you saying you don't have 51 percent of
20 Jaksick entities?

21 A Some of them I do, but not very -- not as
22 many as I think you're alluding to.

23 Q Right. And the family trust is paying down
24 the debt and you're getting 51 percent of the benefit,

1 aren't you?

2 A You'd have to be more specific. All I can
3 think of is the one loan that has to do with Loan 101
4 for Home Camp.

5 Q I credit that's the big loan facility that's
6 cross-collateralized.

7 A All of those debts are paid off except for
8 one loan.

9 Q And Home Camp is a good example, that one is
10 51 percent, 49 percent. Right?

11 A Yes.

12 Q And Mr. Hascheff, was he involved with that?

13 A I'm not sure. I think there was others
14 involved to start out with because I think the purchase,
15 original home camp purchase was in about 2003 or 4 and
16 I'm not sure when Pierre came on.

17 Q But you ultimately ended up with 51 percent
18 of it that was then owned by Nevada Pronghorn 2. Right?

19 A Ultimately, yes.

20 Q And how much was that -- what were the
21 ownership percentages of that one?

22 A All those entities rears there home camp,
23 Nevada Pronghorn, Nevada Pronghorn 2, all those entities
24 have the same ownership.

1 Q You and your trusts own a 51 percent versus
2 Sam, your dad, having 49.

3 A Correct.

4 Q With no investment from you other than being
5 put on a personal guarantee. Right?

6 A No. There was a significant investment. We
7 -- we borrowed money.

8 Q Right.

9 A From the bank.

10 Q Right.

11 A So we could utilize those funds. And then
12 we went out and sold land within those -- that
13 particular entity to be able to pay down some of our
14 annual needs, as well as some of the bank loans. For
15 example, one of the loans was a sale of -- for example,
16 one of the sales we had was a sales to the BLM way back
17 when of approximately 4.5 million dollars that generated
18 cash flow to help us fund that entity and to be able to
19 pay down some debt, but at the time dad wanted to keep
20 most of the cash.

21 Q My point is that at the time that you were
22 getting 51 percent of these entities you were not
23 investing any of your own money in them, you were
24 agreeing to personally guarantee the loans. Right?

1 A No, we were investing money. It depends, I
2 mean there's --

3 **Q I'm talking about you.**

4 A Yes. If you could be more specific. There's
5 many different entities and you're kind of lumping them
6 all together and there's different circumstances for
7 each entity.

8 MR. SPENCER: Your Honor, I offer Exhibit 90?

9 MR. ROBISON: No objection, your Honor.

10 MR. SPENCER: Stipulated.

11 THE COURT: 90 is admitted, Ms. Clerk

12 COURT CLERK: Thank you.

13 (Exhibit 90 is admitted into evidence.)

14 BY MR. SPENCER:

15 **Q It's a list of the top revised February 13th,**
16 **2013, of Jaksick entities. Do you see that?**

17 A Yes, I do.

18 **Q There's one there BBB Investments, 51/49.**
19 **Down at the bottom Duck Flat Ranch, 51/49. Do you see**
20 **that?**

21 A I do, yes.

22 **Q Duck Flat -- I mean I'm sorry. Aspen Streams**
23 **up above, it's owned a hundred percent by your two**
24 **trusts.**

1 A Okay.

2 Q And Home Camp is on the next page, 49 percent
3 SSJ Issue Trust, 51 percent your two trusts. Incline
4 TSS, this one, I guess, was February 13th when Sam
5 wasn't in, you owned a hundred percent of Incline.
6 Right? February, '13?

7 A Yes. I think some of these aren't accurate
8 but yes, I do see that one.

9 Q All right. And so there were a number of
10 entities that were owned 51 percent by you and 49 by Sam
11 or the family trust or the issue trust and the trusts
12 were paying off the debt. Right?

13 A No. Like I said, the sales that we were
14 generating income from were helping pay down those
15 debts. I mentioned to you, if you want to be more
16 specific like with Home Camp, for example, we sold
17 parcels to the BLM that generated about four and a half
18 million which was helping make those payments. And we
19 took about six or eight parcels of land that were kind
20 of scattered 40's, 80's, 80 acres, 160-acre parcels, and
21 we were generating cash flow from selling some of those
22 as well to help service our debt.

23 Q The land that was acquired by the debt that
24 was on the -- that had a lien against it.

1 A Yes. That's what typically would happen is
2 we would get a loan, purchase a piece of property, and
3 then once we purchased the piece of property, then we
4 would be out working on selling those parcels to
5 generate income to help pay down our debt, as well as
6 service our debt.

7 **Q And then you used the indemnity agreement to**
8 **pay your portion of those debt obligations, didn't you?**

9 A I started using the indemnification on that
10 particular loan on Home Camp starting after dad had
11 passed away.

12 **Q And so with the indemnity agreement the trust**
13 **is paying -- family trust is paying all of the debt and**
14 **you're getting 51 percent of the benefit. Right?**

15 A No, they haven't paid all of the debt. Every
16 time that they have made a payment, which I think
17 there's, like, four or so of those, we have carried it
18 on the books as a note that I owe those funds back to
19 the family trust. And then we're going to let -- based
20 off of Pierre Hascheff's testimony, going to let this
21 court, Judge Hardy, analyze the indemnification
22 agreement and make a decision on it, but as of now we're
23 carrying notes on the books so that I owe that money
24 back that they paid.

1 Q Claims that -- but you've made claims against
2 the trust to pay those payments, it's not paid off but
3 payments.

4 A Yes, there was some payments, yes.

5 Q Uh-hum.

6 A Uh-hum.

7 Q And you're the trustee who's supposed to
8 determine whether the indemnify agreement covers that or
9 not. Correct? You and your team?

10 A Yeah, I would say that the trustees, all the
11 trustees would make that determination, yes.

12 Q Yeah. And you testified earlier that
13 Kimmel's done nothing wrong. Right?

14 A Not that I'm aware of.

15 Q Yeah. And he's part of the team, isn't he?

16 A He's a cotrustee of the family trust.

17 Q And he votes with you every time, doesn't he?

18 A No, sir, he does not.

19 Q Certainly voted with you against Stan, hasn't
20 he?

21 A I can't recall an instance, but that is
22 certainly not the case that he always votes with me.

23 Q But he has.

24 A I'm sure that he has voted with me. I

1 remember -- um, yeah, I think there probably was a time
2 or two where he has voted with me.

3 Q And he's sworn to the accountings, verified
4 that they're true and correct, hasn't he, Mr. Kimmel?

5 A I believe it's the same situation where we
6 have verified that Mr. Riley prepared the accountings
7 that we were submitting to the Court.

8 Q And you think this super smart guy that you
9 testified about earlier that's a lawyer didn't
10 understand that statement he made in relation to the
11 accountings?

12 A I'm not sure. You'd have to ask him.

13 Q Well, assuming that he understood it and he
14 agrees with it and you don't, that creates a problem,
15 doesn't it? Talking about the verification of the
16 information in the accountings. Mr. Kimmel agrees that
17 it's true and correct and you don't know or you can't,
18 that creates an issue, doesn't it?

19 A I don't believe so, no, because I believe we
20 both attest to the fact that Kevin Riley prepared the
21 accountings and that we trusted in what he was doing and
22 that we agreed with his analysis of the accountings.

23 Q Do you recall verifying that the information
24 contained in the financial statements was true and

1 correct?

2 A I -- probably so, yeah.

3 Q All right. And you also recall Mr. Hascheff
4 being asked by your attorney whether Mr. Riley was
5 instrumental in implementing the decisions of the
6 cotrustees. You remember that?

7 A No.

8 Q Okay. He is instrumental or has been
9 instrumental in that, hasn't he? Mr. Riley.

10 A I guess I'm not sure if I'm able to answer
11 your question properly, but he certainly provides us his
12 accounting knowledge and his expertise as being the
13 family accountant that helps us make decisions.

14 Q Part of the team that makes the decision.
15 Right?

16 A I don't know if he's part of the team that
17 makes the decision, but he is part of the team that
18 helps us make the decisions.

19 Q Mr. Kimmel's part of the team that's as well.
20 Right?

21 A Yeah, Mr. -- Mr. Kimmel, Stan and myself are
22 the trustees, and Kevin Riley is the accountant that we
23 have hired to be able to analyze all of the accounting
24 work for us.

1 Q And you understand the aiding and abetting of
2 breach of fiduciary duty that you were asked about
3 earlier regarding Mr. Riley encompasses the time period
4 before and after he was a trustee. Right?

5 MR. ROBISON: Objection. This court has
6 ordered otherwise in the motion to dismiss.

7 THE COURT: I believe that question harkened
8 to a question that Mr. Robison asked; is that correct?

9 MR. SPENCER: That's correct, your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: Could you ask the question
12 again, please?

13 BY MR. SPENCER:

14 Q That it's not just the period of time when
15 Mr. Riley was serving as cotrustee, but it was before
16 and after that as far as the breach of -- aiding and
17 abetting breach of fiduciary duty?

18 A I'm not sure.

19 Q Okay. And then when the team has a meeting,
20 obviously at some point in that meeting there is a
21 decision that's made and there's a meeting of the minds
22 in that regard. Correct?

23 A Not necessarily. I mean, there could be
24 times where not everybody totally agrees.

1 Q Well, the group as a whole agrees before the
2 cotrustees proceed. Right?

3 A I can't really say that. We make a decision,
4 it's really the cotrustees making the decision, I can't
5 -- I think what you're basically saying is if Stand and
6 Mike and I agree to something then all of a sudden that
7 means that Kevin, Bob, Mike or Don Lattin or whoever are
8 all agreeing and I just don't necessarily know that's
9 the case.

10 Q Participated in the meeting where the
11 decision was made. Correct?

12 A For the most part, yes, we have been. It
13 depends what meeting --

14 Q Sure.

15 A -- you're talking about. I mean, there's a
16 thousand different circumstances, but there is meetings
17 when everybody participates. There's meetings when
18 there's not everybody that participates.

19 Q And you testified earlier that it was
20 stressful for your father to pay for Wendy's expenses.

21 A Because they would have continual arguments
22 over that, yes.

23 Q The only time you ever saw your dad's face
24 turn red was when -- was over Wendy and having to deal

1 with those expenses.

2 A At the office that's when I would see dad's
3 face getting red when he was coming out of meetings
4 dealing with budgets with Wendy, yes.

5 Q Did his face turn red when you attacked him
6 in front of Stan?

7 A I never attacked him in front of Stan.

8 Q Do you recall Stan testifying to that?

9 A I recall Stan saying that I was in a meeting
10 with dad where I was swearing at dad, and I do not ever
11 recall that meeting.

12 There was a meeting where dad had gotten in
13 trouble down in Arizona for a case that he had going on
14 down there, and I recall saying words that I couldn't
15 believe us having a discussion about one of the guys
16 that was involved in the case with dad down in Arizona.
17 And I do not recall any such thing different than that.

18 Q You standing over your dad berating him and
19 threatening him, you don't recall that?

20 A Absolutely not.

21 Q Okay. And you know that it's up to you to
22 show what it was that was disclosed in relation to the
23 ACPAs. Right?

24 MR. ROBISON: Objection, calls for a legal

1 disclosure on burden.

2 THE COURT: Overruled.

3 THE WITNESS: Could you be a little more
4 specific, please?

5 BY MR. SPENCER:

6 Q Yes. I'm asking you as trustee understanding
7 your obligation of full disclosure you understanding
8 that it's your obligation to show and prove what it was
9 that was disclosed to the beneficiaries in relation to
10 the ACPAs. Right?

11 A I'm not sure. I'm not sure.

12 Q You don't know that?

13 A Yeah, I don't know what is exactly required
14 to be disclosed along side with the ACPAs. I just know
15 that we had ACPAs and if there was other documents that
16 were associated with the ACPAs, they were separate
17 documents.

18 Q Well, you just testified Mr. Robison showed
19 you that paragraph, he kept showing you this is binding
20 and everything's waived and all of that, and you don't
21 know what was required in order to make that binding
22 paragraph binding; is that right?

23 A I think the document itself, the wording
24 within the document was my understanding exactly what we

1 were agreeing to.

2 Q You rely upon that but you don't have to rely
3 upon the disclosure that you were required to make; is
4 that correct?

5 A I'm not sure. This is just the way the
6 counsel prepared these documents.

7 Q Is you made a comment about the orphan
8 signature pages on how it references in Exhibit 14.
9 You want to pull that up, Keith?
10 How it referenced in Exhibit 14 the various
11 parties. Right?

12 MR. ROBISON: 14.

13 MR. SPENCER: Exhibit 14.

14 MR. ROBISON: Thank you.

15 BY MR. SPENCER.

16 Q Did I hear you say earlier that where it says
17 "Todd B. Jaksick, Member," that's supposed to mean your
18 family trust?

19 A Todd B. Jaksick and my family trust, yes.

20 Q No, it doesn't say and my family trust, it
21 says Todd B. Jaksick, individually.

22 A Okay.

23 Q You said earlier that that indicates Todd B.
24 Jaksick's family trust, and that's just not a fact, is

1 it?

2 A I'm not sure, you -- Brian McQuaid would have
3 to answer that.

4 Q How did you testify earlier that was the case
5 if you're not sure?

6 A All I can say is that Brian McQuaid knew who
7 the members were, and I don't know whether it's
8 appropriate to put Todd B. Jaksick or Todd B. Jaksick
9 Family Trust, I'm not sure, but either way it's Todd
10 Jaksick.

11 Q Well, you testified earlier that that entry
12 there, Todd B. Jaksick, meant your family trust.

13 A That's what I was alluding to, yes, I
14 understand that.

15 Q That's just flat-out deceptive to the
16 beneficiaries that are signing this document, isn't it?

17 A I don't believe so, but.

18 Q You've testified earlier that you understand
19 the difference in the various capacities that you hold.
20 Right?

21 A Yes.

22 Q And you individually is different than you as
23 trustee of your family trust. Right?

24 A Um, I think it's me both ways. I think my

1 family trust -- it could be. I'm not sure.

2 Q Okay. And then you also testified that
3 wasn't until this Exhibit 16, the ACPA dated July 24th,
4 2013 or '17 where you realized that one of your
5 beneficiaries was an adult. Is that true?

6 A Necessarily wasn't note that she was an
7 adult, it was the fact that the primary beneficiaries
8 were originally thought to be the first lineal
9 descendants of dad which was Stan, Wendy and Todd, and
10 Lexi is the daughter of Wendy. And so I think Brian
11 McQuaid originally took the position that the primary
12 beneficiaries were the direct kids of dad.

13 Q And you understand that the point of the
14 orphan signature page is not that it references
15 something in the document, but that if it's an orphan
16 signature page the previous documents can be changed
17 out, manipulated, typed, new stuff typed in or whatever,
18 you understand that that's the point. Right?

19 A No, sir, I do not.

20 Q Why is that not the case? If you've got an
21 orphan signature page that has no indication that it's
22 attached to anything else, why would it not be possible
23 to change out pages or to change terms or to manipulate
24 margins or to do those kinds of things?

1 A 'Cause I don't do those kinds of things.

2 Q I didn't ask you that. I asked you if it was
3 possible.

4 A I think anything's possible.

5 Q Well, yeah. And that's why if we look at
6 Exhibit 14, the signature page, and I'll limit this,
7 your Honor.

8 THE COURT: I didn't hear you. You said
9 something but you were partially turning toward me.

10 MR. SPENCER: If you look at -- and I'm going
11 to run through these just real quick.

12 THE COURT: Run through these, but speak
13 slowly, though. That's for our reporter.

14 MR. SPENCER: Yes, sir.

15 BY MR. SPENCER.

16 Q If we look at Exhibit 14 signature page.
17 Blow it up some, Keith, so we can see the whole page.

18 There you go. Orphan signature page, nothing
19 indicating it's connected to anything. It references
20 some parties that may be in the document, but nothing
21 there. Exhibit 15 signature page, orphan signature
22 page. Right? Nothing connecting it to anything, other
23 than the primary beneficiaries there. Right?

24 A Yeah, I'm not sure what the footer means but,

1 I mean, this is just the way counsel prepares documents,
2 both of them, both counsels.

3 **Q 16, Exhibit 16, signature page, orphan**
4 **signature page.**

5 MR. ROBISON: Objection. That's not the full
6 signature page. The signature starts in the previous
7 page which shows a content of the document, and that's
8 misleading.

9 MR. SPENCER: Sure. All right. Show the
10 previous page.

11 THE COURT: So it is misleading unless you
12 take the time to show it sequentially. This is
13 important enough to go through, please go through it
14 slowly.

15 MR. SPENCER: Okay.

16 BY MR. SPENCER:

17 **Q Page 2, well, that one's not an orphan**
18 **signature page, you can clearly see that it's connected**
19 **to the document. Right?**

20 A It's the same -- it's the same document. I
21 don't know why Brian McQuaid decided to put part of the
22 signatures on page 2. I guess he could have put all
23 those on page 3 if he wanted to. I mean, probably you
24 just have to ask him why he prepares the documents that

1 way.

2 Q But then when the beneficiaries sign on page
3 3 of Exhibit 16, that's an orphan signature page.
4 Right?

5 MR. ROBISON: Objection. Mr. Jaksick, Stan
6 Jaksick is a beneficiary and he signed on page 2.

7 THE COURT: So I need an evidentiary
8 objection. I believe you're saying it's misleading.

9 MR. ROBISON: And misstates.

10 THE COURT: And misstates. Overruled.

11 BY MR. SPENCER:

12 Q Mr. Stan Jaksick signed on the second page as
13 a cotrustee, not as a beneficiary. Right?

14 A I'd have to look at that.

15 Q Blow that up, Keith.

16 Cotrustee, Stan signed that.

17 A Okay.

18 Q I asked you about the beneficiaries. And
19 that beneficiary page is not connected to anything, is
20 it?

21 A Like I said, you -- I think Brian McQuaid's
22 going to be deposed, you can ask him why he prepared
23 them that way. I don't know.

24 Q Exhibit 17, page 2, up one. There you go.

1 Trustees sign on that page? And then we have
2 an orphan signature page where the beneficiaries sign,
3 don't we?

4 A And a footer at the bottom.

5 Q Yeah, we'll look at that tomorrow. Exhibit
6 18? Through this so we can end.

7 Page 2, trustees sign. And then next page,
8 beneficiaries sign, that's an orphan signature page.
9 Exhibit 19?

10 MR. ROBISON: Ask a question he can answer,
11 your Honor.

12 BY MR. SPENCER:

13 Q Can you answer? Is that right?

14 THE COURT: Sustained.

15 THE WITNESS: I don't know how else to answer
16 them except for I don't know why Brian McQuaid prepared
17 them that way.

18 BY MR. SPENCER:

19 Q All right. Then and two more, Exhibit 19,
20 page 2, trustee sees sign?

21 MR. ROBISON: Page 2. The jury's being shown
22 page 3. Thank you.

23 BY MR. SPENCER:

24 Q It's page 2.

1 MR. ROBISON: It is now.

2 MR. SPENCER: It was. And so --

3 THE COURT: All right, counsel, at that point
4 in the transcript it marks the first sanction against
5 both of you.

6 MR. SPENCER: Okay.

7 THE COURT: Carry on, please.

8 BY MR. SPENCER:

9 Q And then page 3, orphan signature page, is
10 that an orphan signature page there?

11 A I just -- I'd have to say the same thing. I
12 don't know why Brian McQuaid prepared it that way but it
13 shows the footer right there so I don't know if that
14 ties it back to the main part of the document, I'm not
15 sure.

16 Q And then last, Exhibit 20, page 2, cotrust --
17 you as a cotrustee signed there. But then on the next
18 page 3, again, notwithstanding the trustee, cotrustee
19 Stan signed at the top the beneficiaries. This is an
20 organ signature page. Right?

21 A Yeah. Same comment on my behalf.

22 MR. SPENCER: Thank you, your Honor.

23 BY MR. SPENCER:

24 Q And then just for the record, Exhibits 21, 2

1 and 3, the other ACPAs are not like that. Are you aware
2 of that?

3 A I'm not sure.

4 MR. SPENCER: Okay, your Honor. Thank you.
5 Stop for the day.

6 THE COURT: You're done?

7 MR. SPENCER: I just got a few more questions
8 tomorrow. We'll go until five?

9 THE COURT: You can go until about 4:40, about
10 five more minutes.

11 Stand for just a moment, ladies and gentlemen.
12 Unless you think you're going to take more than that
13 time which is fine, but I just want to know how --

14 MR. SPENCER: I'll try. And I'll try and wrap
15 up, your Honor, in just a few minutes.

16 THE COURT: Okay. Be seated, please.

17 MR. SPENCER: Your Honor, after all that I'll
18 pass the witness.

19 THE COURT: All right. Ladies and gentlemen
20 during this --

21 MR. ROBISON: We get to go?

22 THE COURT: Would you like to begin for a few
23 minutes or shall I just send the jury home?

24 MR. ROBISON: He's their witness.

1 THE COURT: Excuse me. Direct, cross,
2 redirect, recross.

3 MR. ROBISON: Thank you.

4 THE COURT: Waived. At the moment.

5 MR. ROBISON: No, not just -- I was asking the
6 court whether we got recross.

7 THE COURT: Yes.

8 MR. ROBISON: Okay. Thank you.

9 THE COURT: Please.

10 MR. ROBISON: Then we pursue that.

11 THE COURT: Would you like to begin? You have
12 about five minutes, or we can reconvene tomorrow
13 morning.

14 MR. ROBISON: Well, I'll use five minutes.
15 Let's get some more done.

16 THE COURT: Go ahead.

17 RE CROSS EXAMINATION

18 BY MR. ROBISON:

19 Q Mr. Jaksick.

20 A Yes, sir.

21 Q With respect to the ACPAs and the signature
22 configurations, those pages that counsel refers to as
23 orphans, they were signed in a group setting most of the
24 time, weren't they?

1 A They were signed with a document, yes.

2 Q And did you ever hear a question from Wendy
3 about these pages that she signed, all ten times, all
4 ten ACPAs?

5 A Not until more recently when she said they
6 were all forged.

7 Q All right. Did she not hold out on a
8 signature on one?

9 A Yes.

10 Q And did she ask for some remuneration in
11 exchange for signing a ACPA that reflected the truth?

12 A I'm not sure what remuneration means.

13 Q That's money.

14 A Okay.

15 Q That's a lawyer word for money.

16 A Okay. She did.

17 Q Well, did you cave? Did you pay her the
18 money for her signature?

19 A No, we did not.

20 Q Did you get the signature?

21 A Yes, she did provide the signature to Stan.

22 Q And how did Stan get it?

23 A Wendy emailed it to Stan.

24 Q From her email address?

1 A Yes.

2 Q Any reason to dispute the authenticity of
3 that signature Wendy put on that ACPA?

4 A No, she said she signed it.

5 Q In what? In the email?

6 A I'm not sure it was the email, but later on
7 she did say she signed it.

8 Q You ever heard Wendy use the phrase orphan
9 page, orphan signature page?

10 A No.

11 Q When's the first time you heard that?

12 A As part of this case.

13 Q From counsel?

14 A Yes.

15 Q Has Stan ever referred to any of these as an
16 orphan page that he did not sign?

17 A Not that I recall right now.

18 Q Wendy has claimed that her signature was
19 forged on a couple of these. Correct?

20 A Correct.

21 Q And we hired a handwriting expert to opine on
22 her signatures?

23 A Correct.

24 Q You know what that opinion is, don't you?

1 A I do.

2 **Q She signed every one of them, didn't she?**

3 MR. SPENCER: Objection, your Honor, leading
4 and hearsay.

5 THE COURT: Sustained.

6 BY MR. ROBISON:

7 **Q Do you know what Exhibit 220 finds? 220 is**
8 **in evidence? That's the expert report of Jim Green.**

9 A Yes. The signature expert says that Wendy's
10 signature was on all of these ACPAs.

11 MR. ROBISON: Thank you. Can I continue
12 tomorrow, your Honor?

13 THE COURT: Yes. Ladies and gentlemen, during
14 this evening recess --

15 Ladies and gentlemen, you are admonished not
16 to converse amongst yourselves or with anyone else on
17 any subject connected with this trial.

18 You will not read, watch or listen to any
19 report of or commentary on the trial by any person
20 connected with this case, or by any medium of
21 information including without limitation the newspaper,
22 television, internet or radio.

23 You're further admonished not to form or
24 express any opinion on any subject connected with this

1 trial until the case is finally submitted to you.

2 Please remember that includes any form of
3 electric research and experimentation.

4 Our trial day tomorrow for the attorneys will
5 start at nine a.m., but I don't want you to be here
6 while we work and so I will have you return into the
7 jury deliberation for entry into the courtroom at 11:00
8 a.m.

9 Now, here's our trial schedule for tomorrow.
10 Please eat before you arrive at 11 because we'll go from
11 11 to 12:30, taking a 15-minute break, 12:45 to 2:15,
12 taking a 30-minute break, 2:45 to 4:00, a 15-minute
13 break, and then 4:15 to about 4:45.

14 We will see you tomorrow at 11:00. Ladies and
15 gentlemen, the delay is caused by this Court's calendar
16 and other obligations, not counsel, not any of the trial
17 participants. It's possible I won't call you in until
18 11:10ish or so, I think it will be 11:00. Please be
19 patient. And if not, hold it against me and not any of
20 the trial participants. We'll stand for our jury.

21 (Jury leaves courtroom for the day.)

22 THE COURT: I'll just have you write, Ms.
23 Reporter, that I'm going to keep counsel and we're talk
24 about instructions for awhile, but I don't want our

1 conversation to be written.

2 REPORTER: Thank you.

3 (Proceedings recessed until February 26, 2019,
4 at 11:00 a.m.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

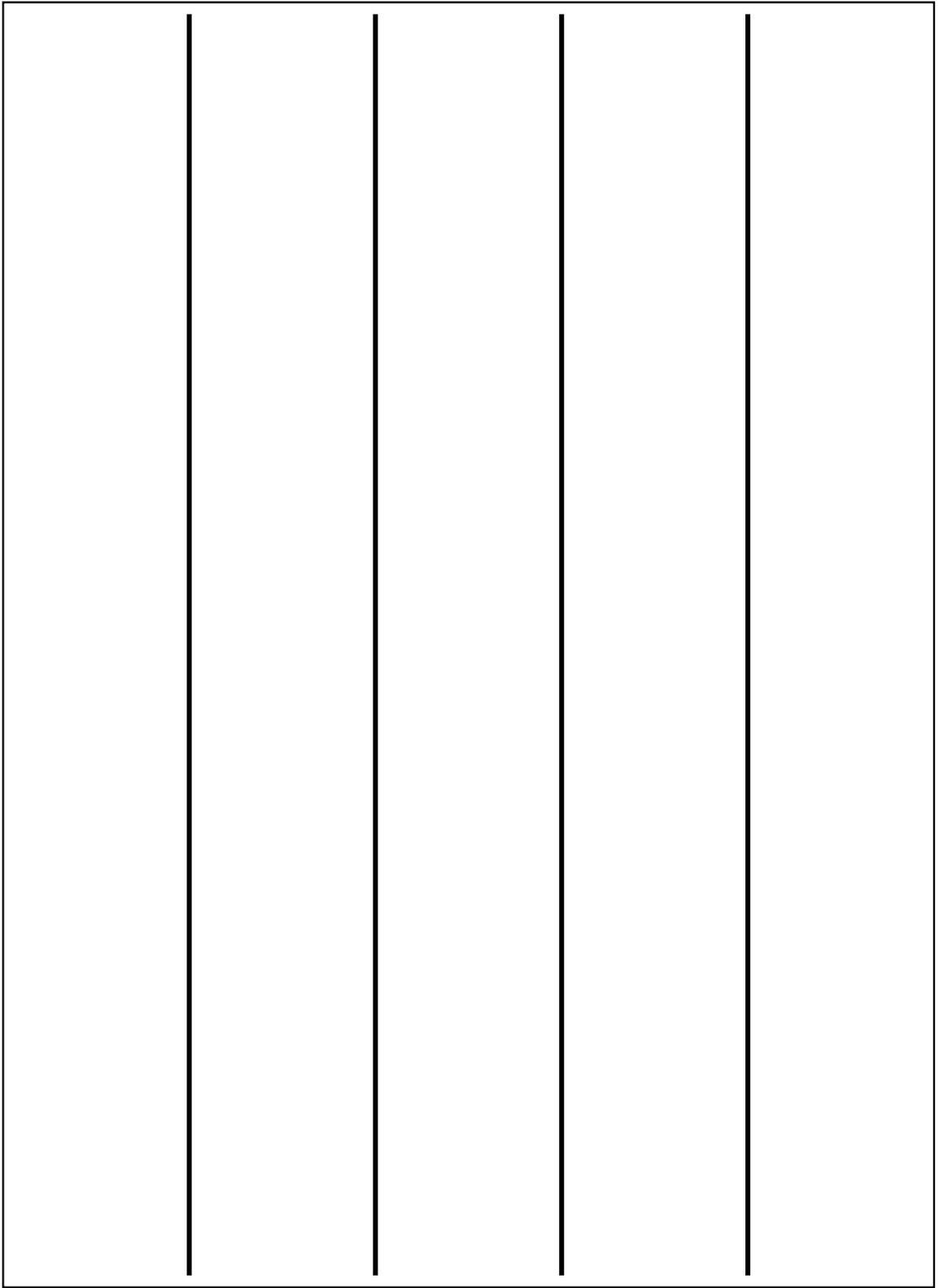
3
4 I, JULIE ANN KERNAN, official reporter of
5 the Second Judicial District Court of the State of
6 Nevada, in and for the County of Washoe, do hereby
7 certify:

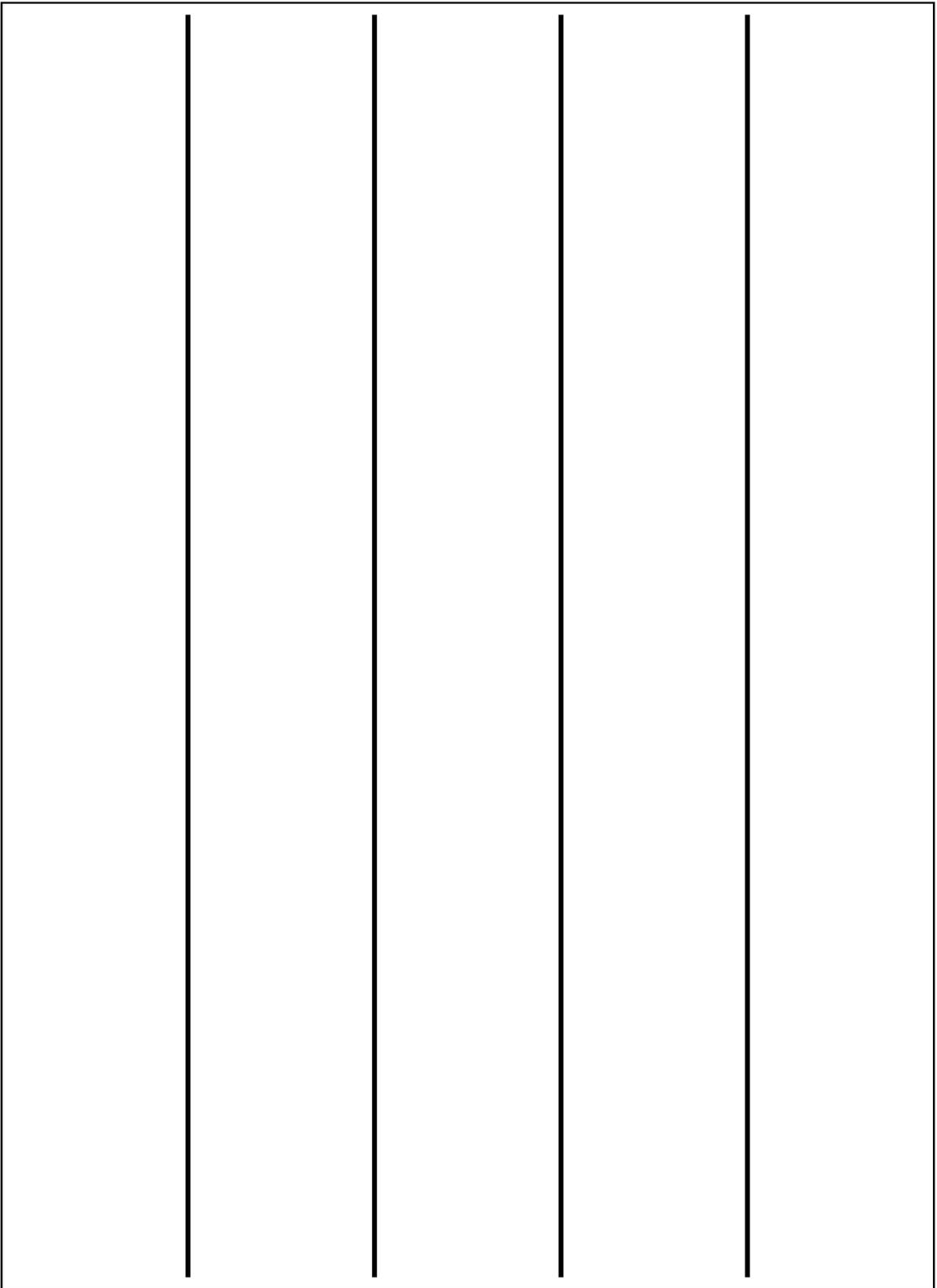
8 That as such reporter I was present in
9 Department No. 15 of the above court on Monday,
10 February 25, 2019, at the hour of 8:40 a.m. of said day,
11 and I then and there took verbatim stenotype notes of
12 the proceedings had and testimony given therein upon the
13 Jury Trial of the case of In the Matter of the
14 Administration of the SSJ'S ISSUE TRUST & SAMUEL S.
15 JAKSICK, JR. FAMILY TRUST, Case Nos. PR17-00445 &
16 PR17-00446.

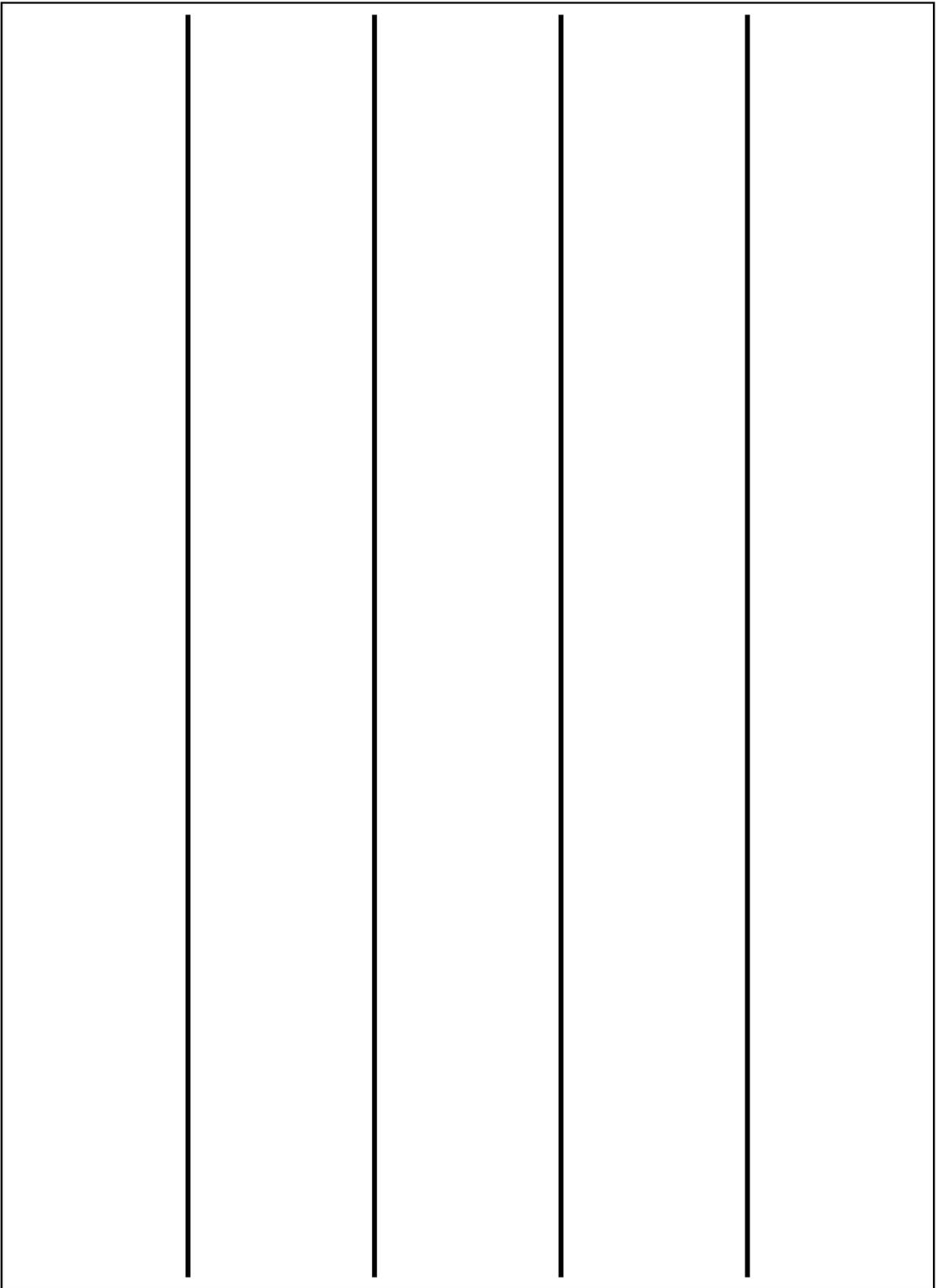
17 That the foregoing transcript, consisting of
18 pages numbered 1 through 273, both inclusive, is a full,
19 true and correct transcript of my said stenotype notes,
20 so taken as aforesaid, and is a full, true and correct
21 statement of the proceedings of the above-entitled
22 action to the best of my knowledge, skill and ability.

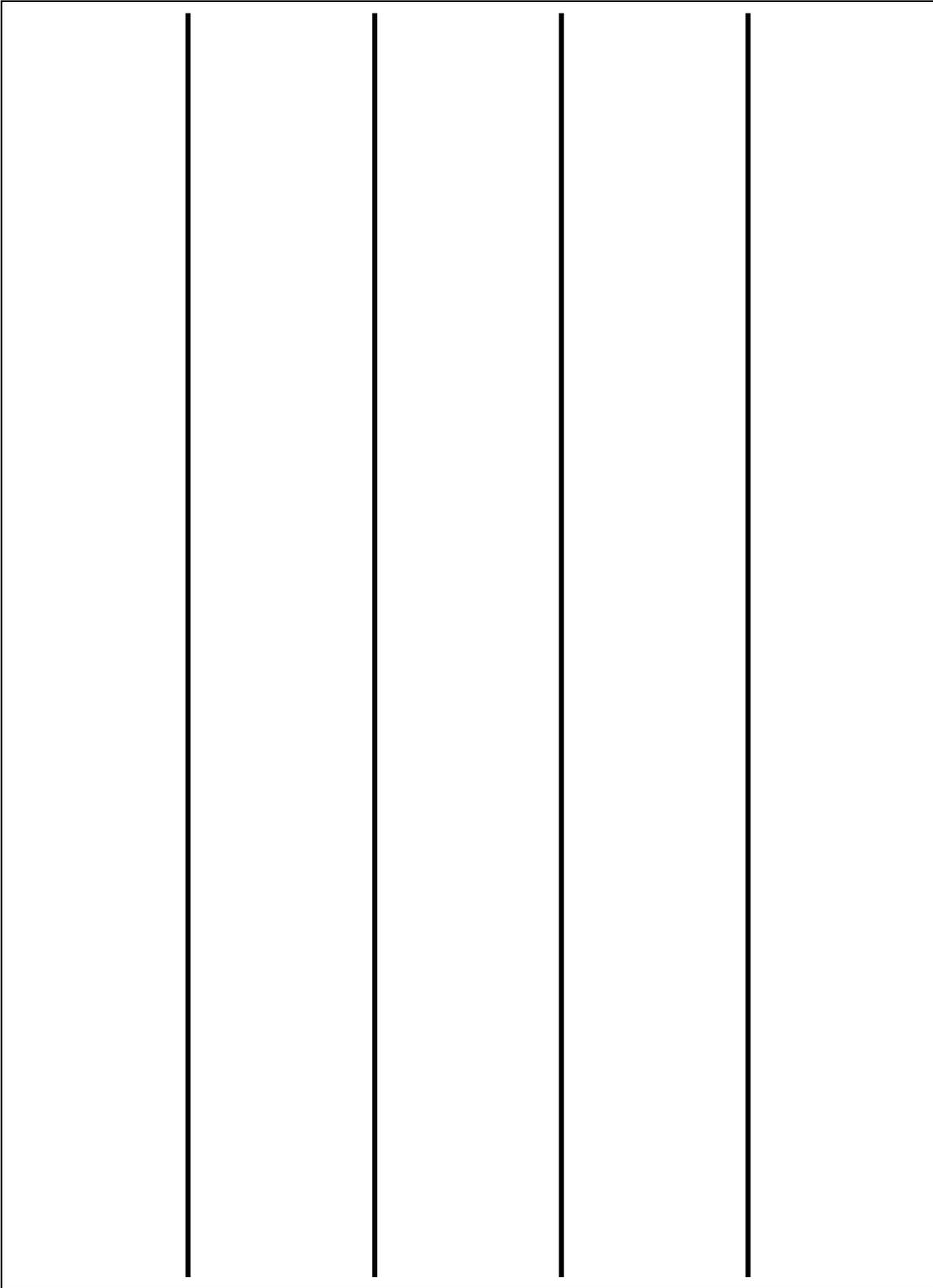
23 DATED: At Reno, Nevada, this 11th day of May, 2019.
24 /s/ Julie Ann Kernan

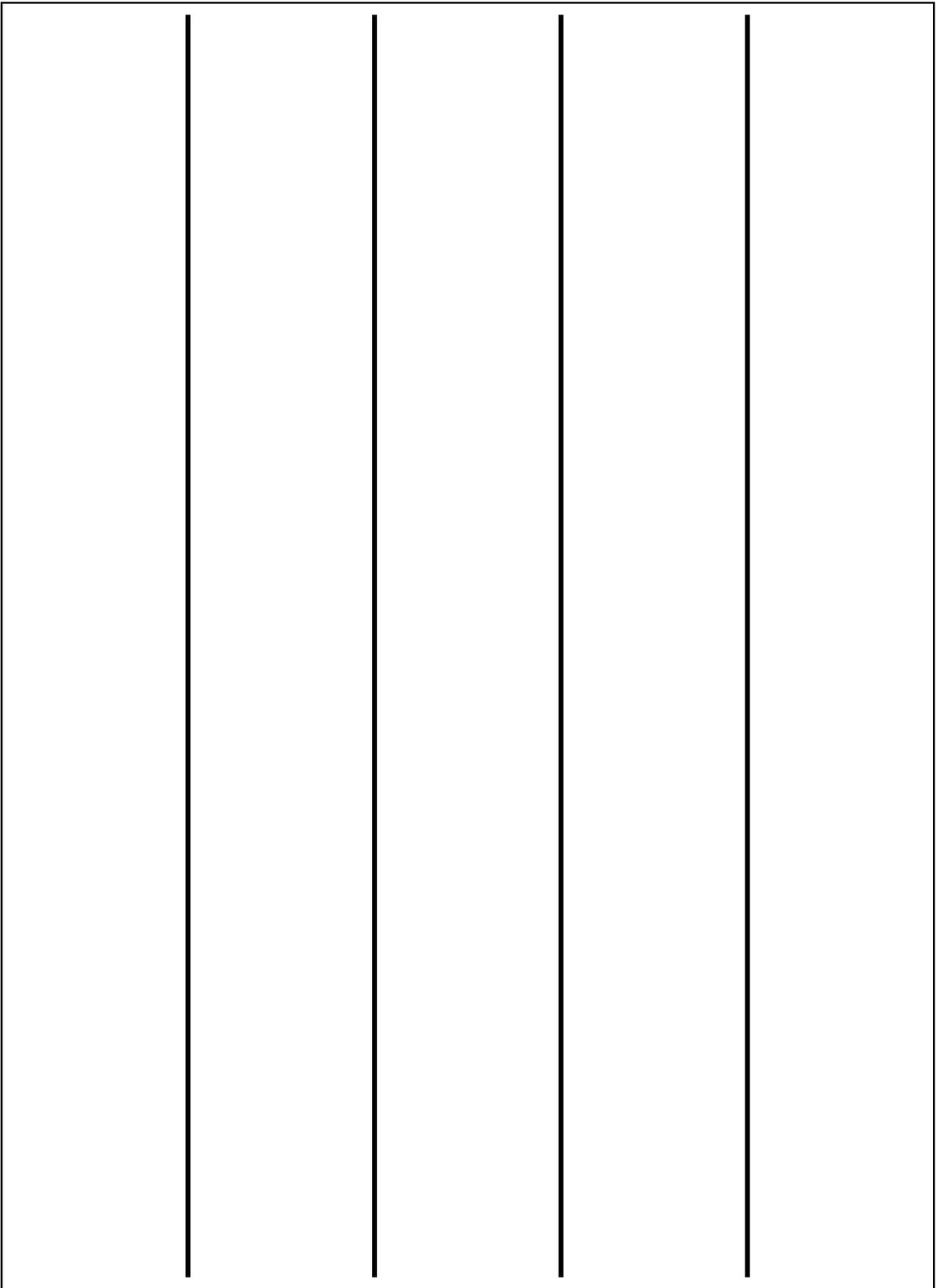
JULIE ANN KERNAN, CCR #427

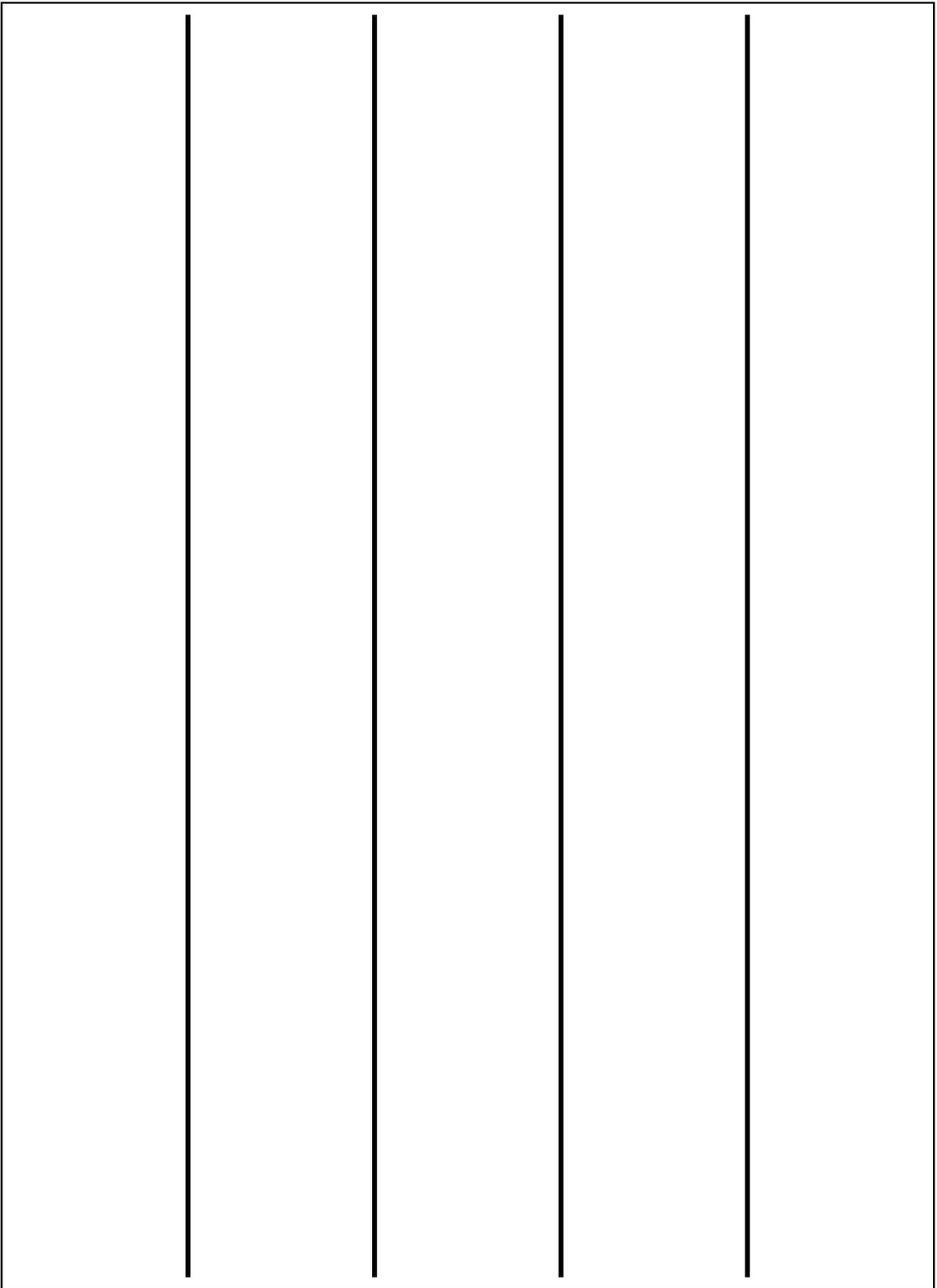


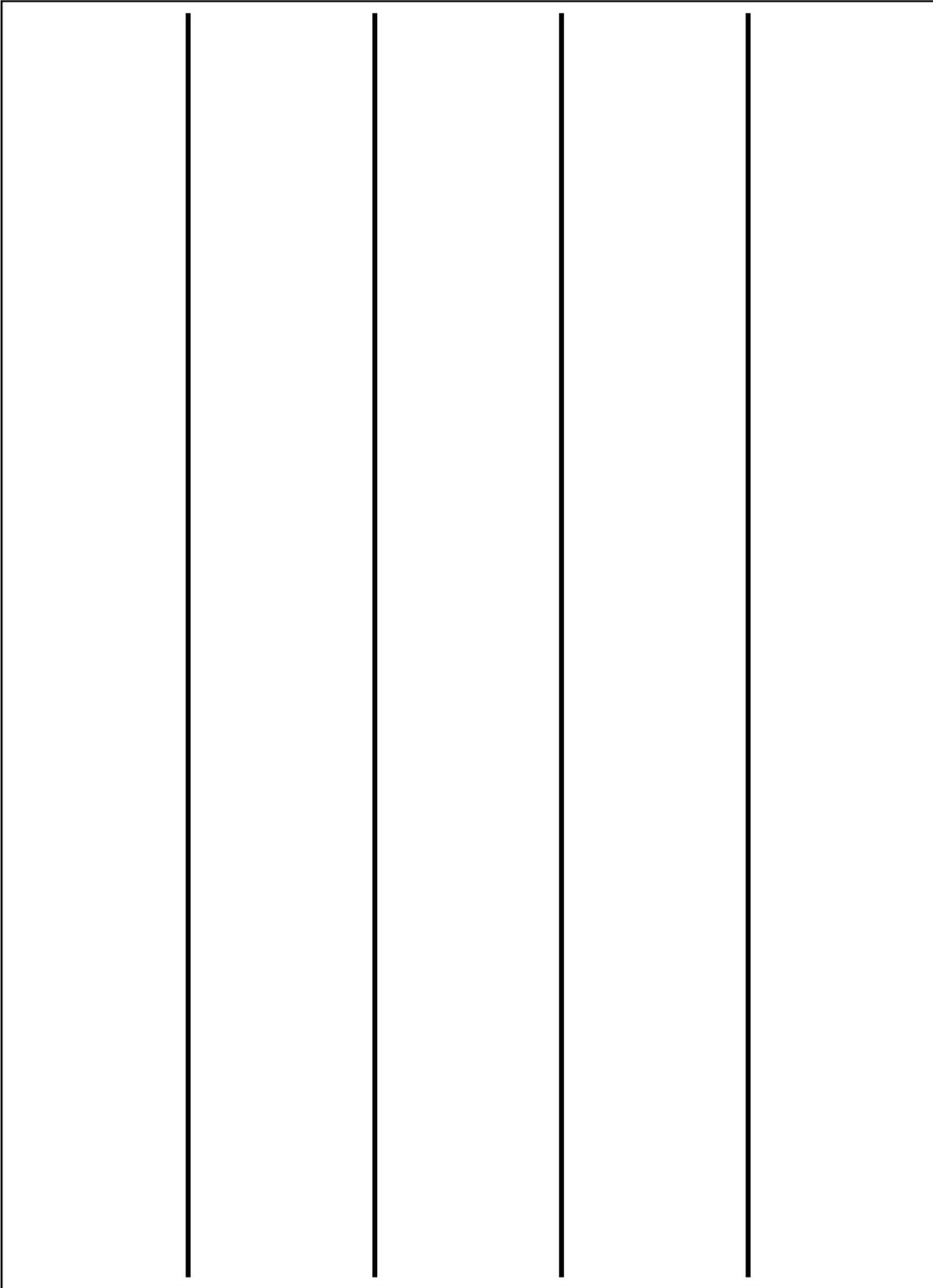


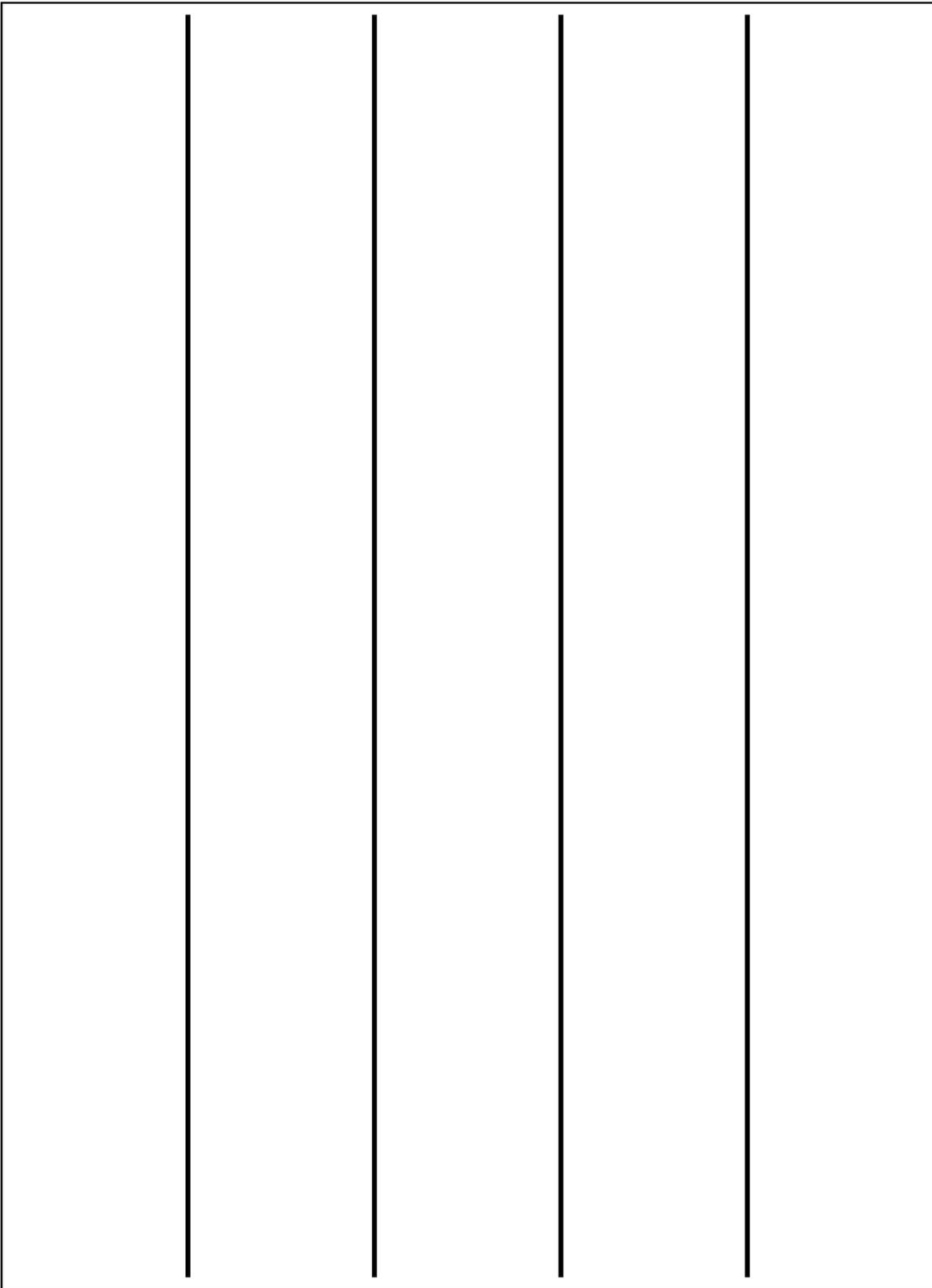


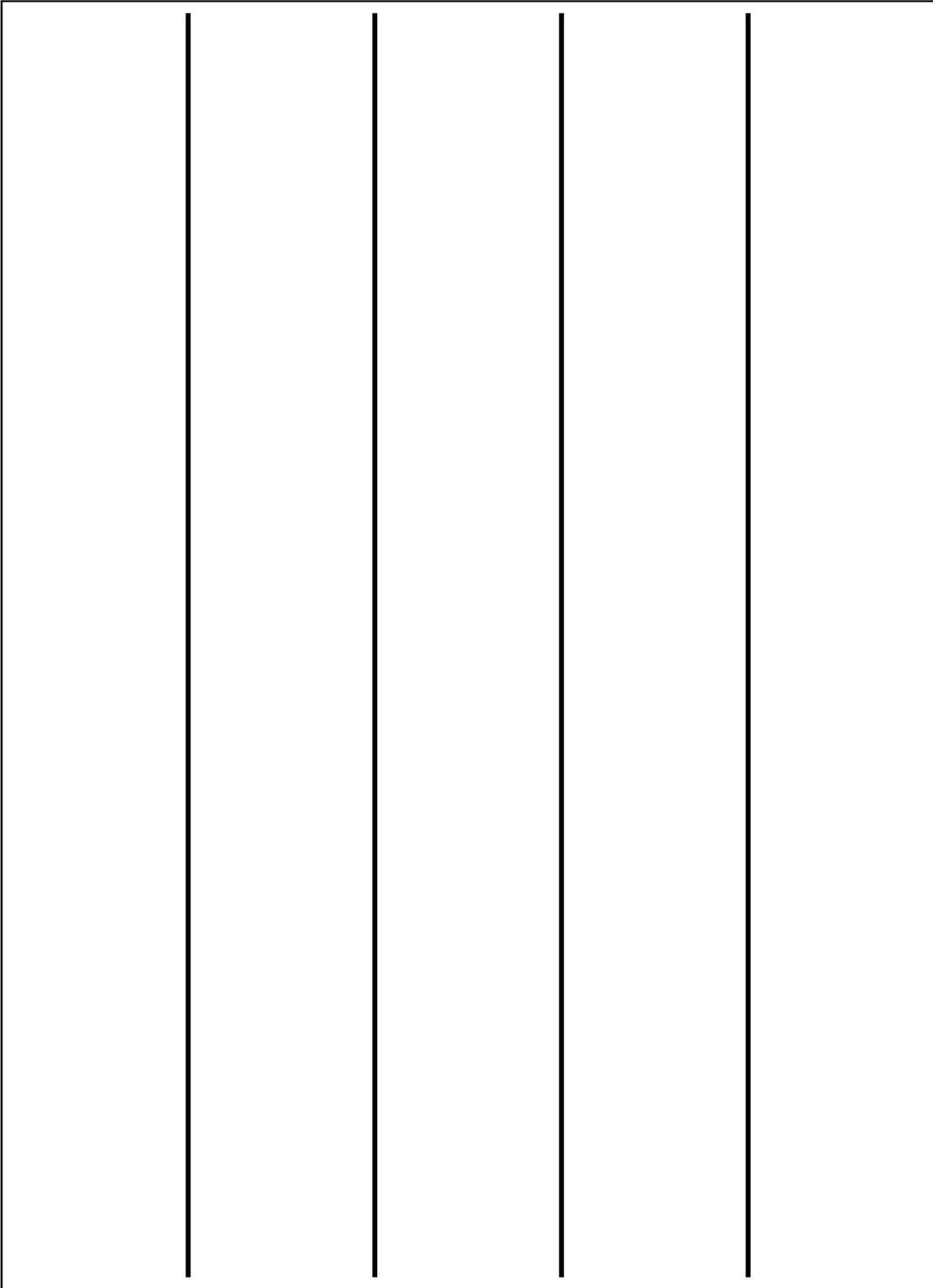


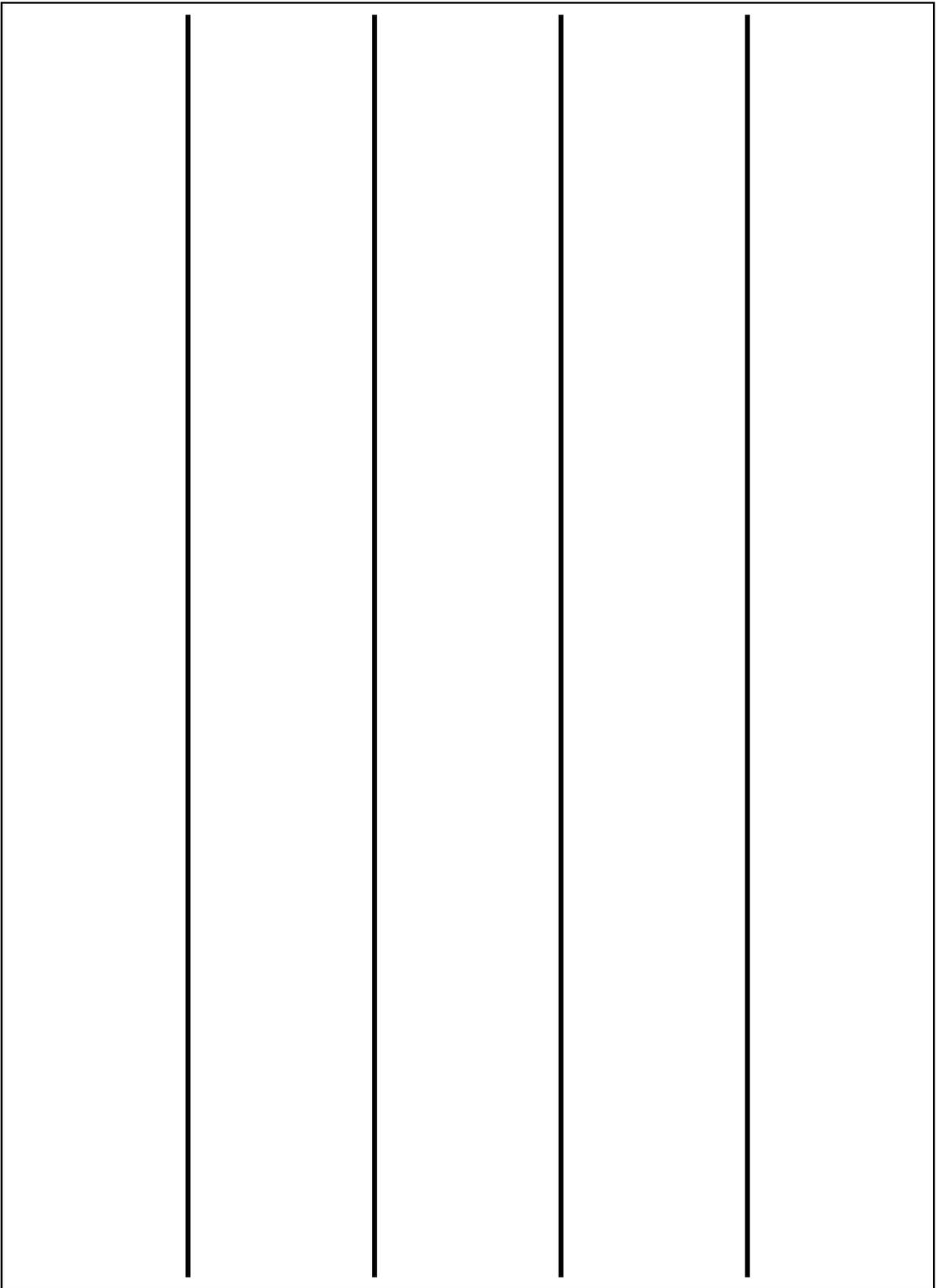


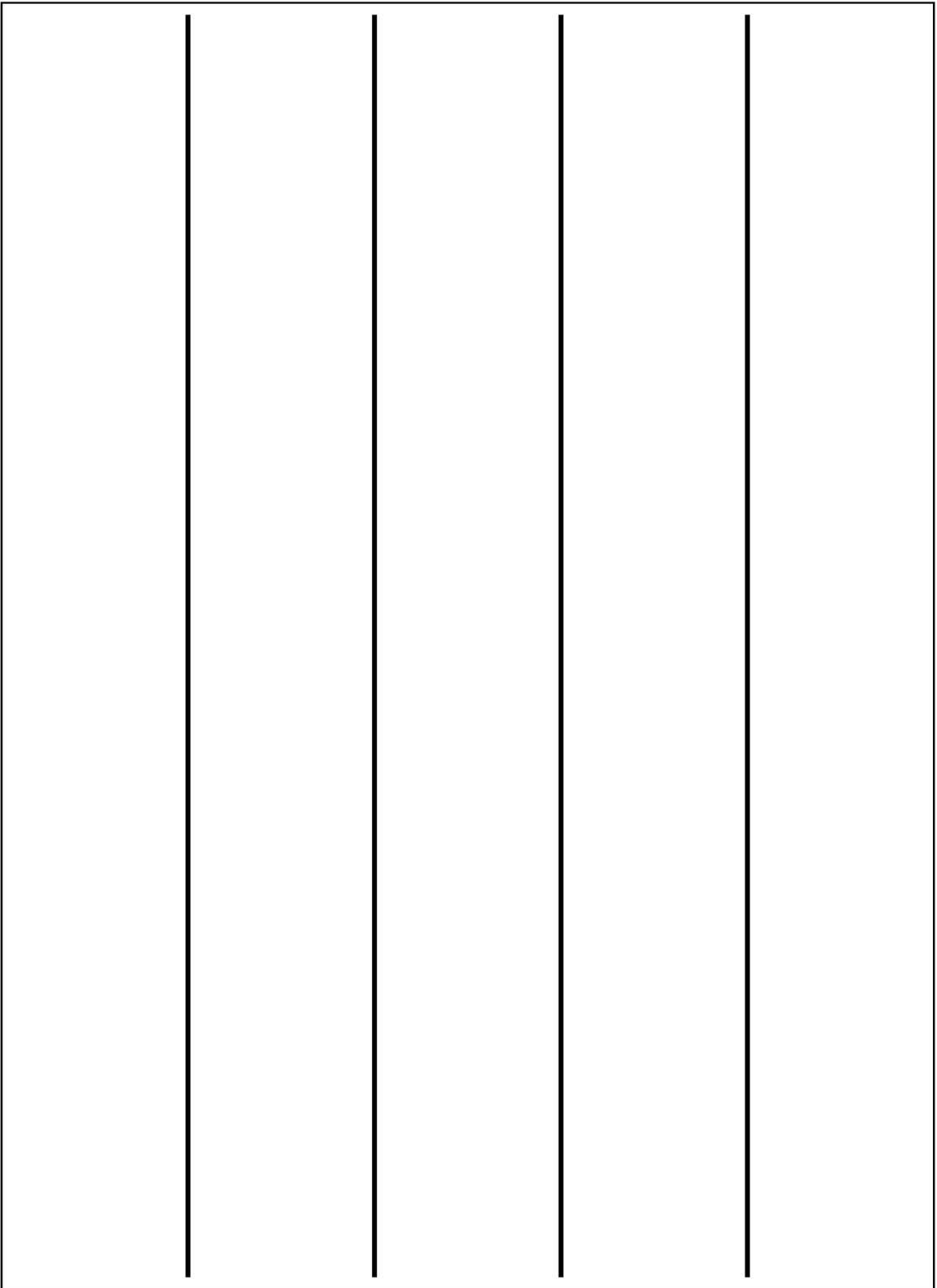


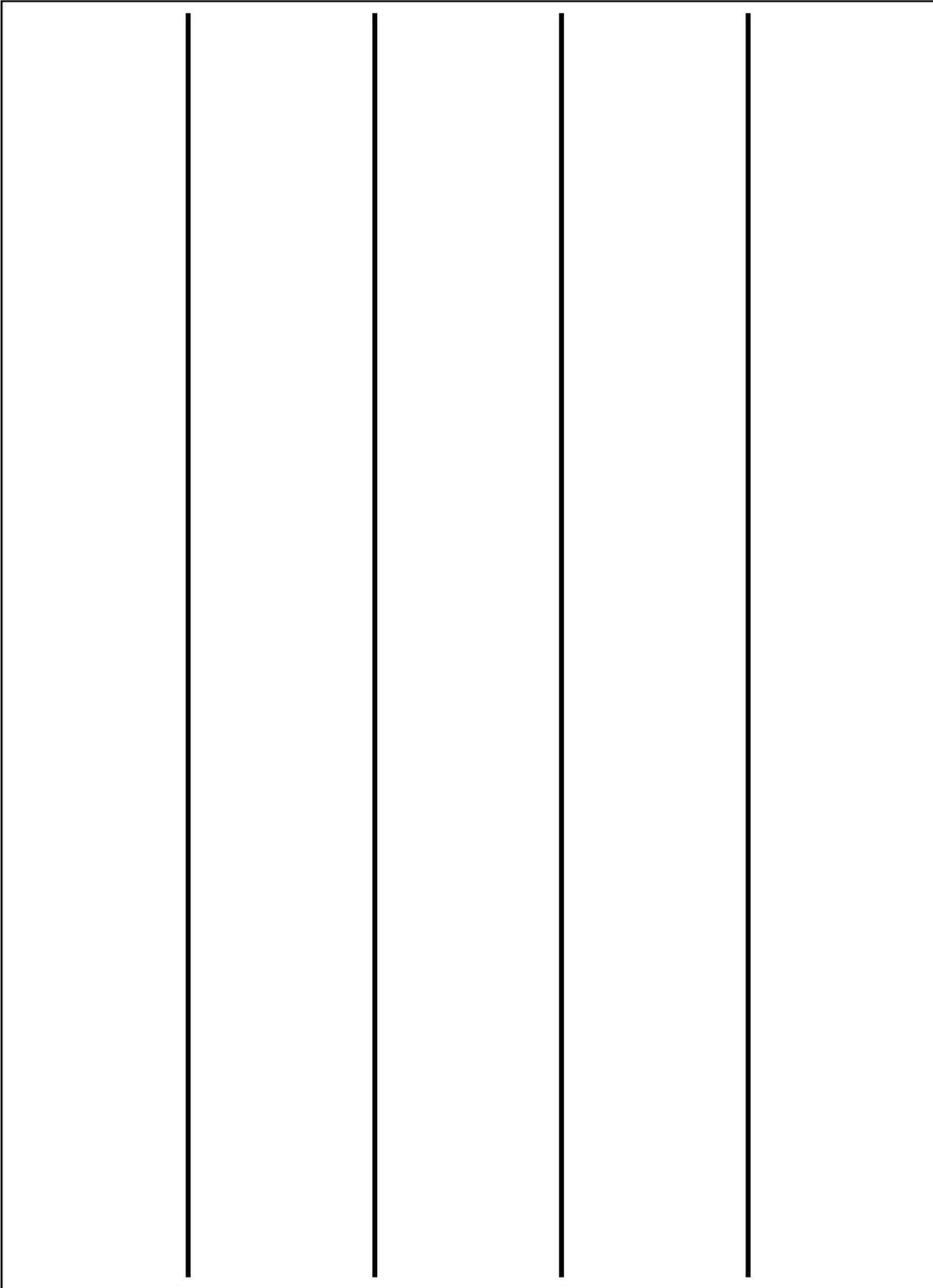


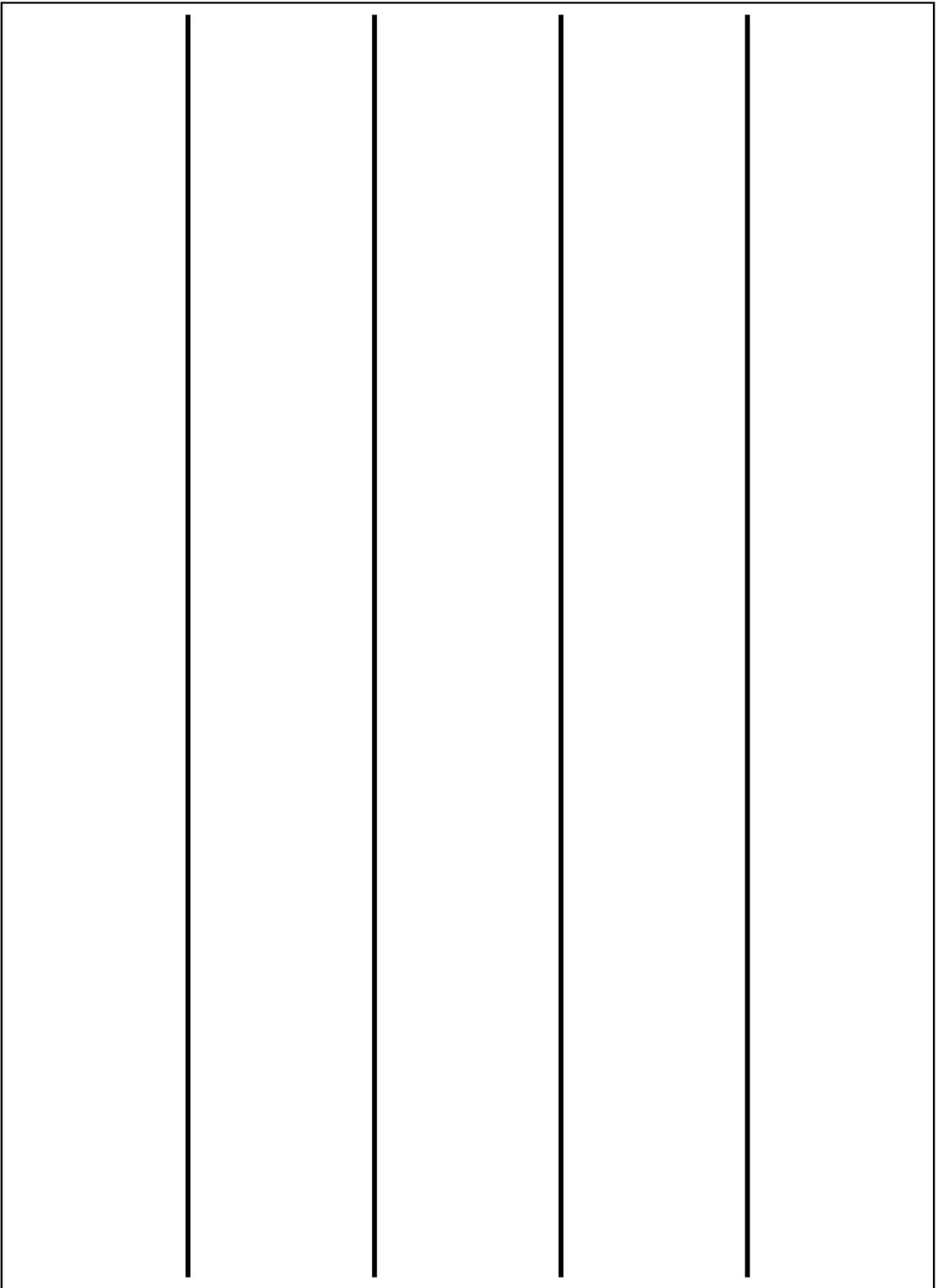


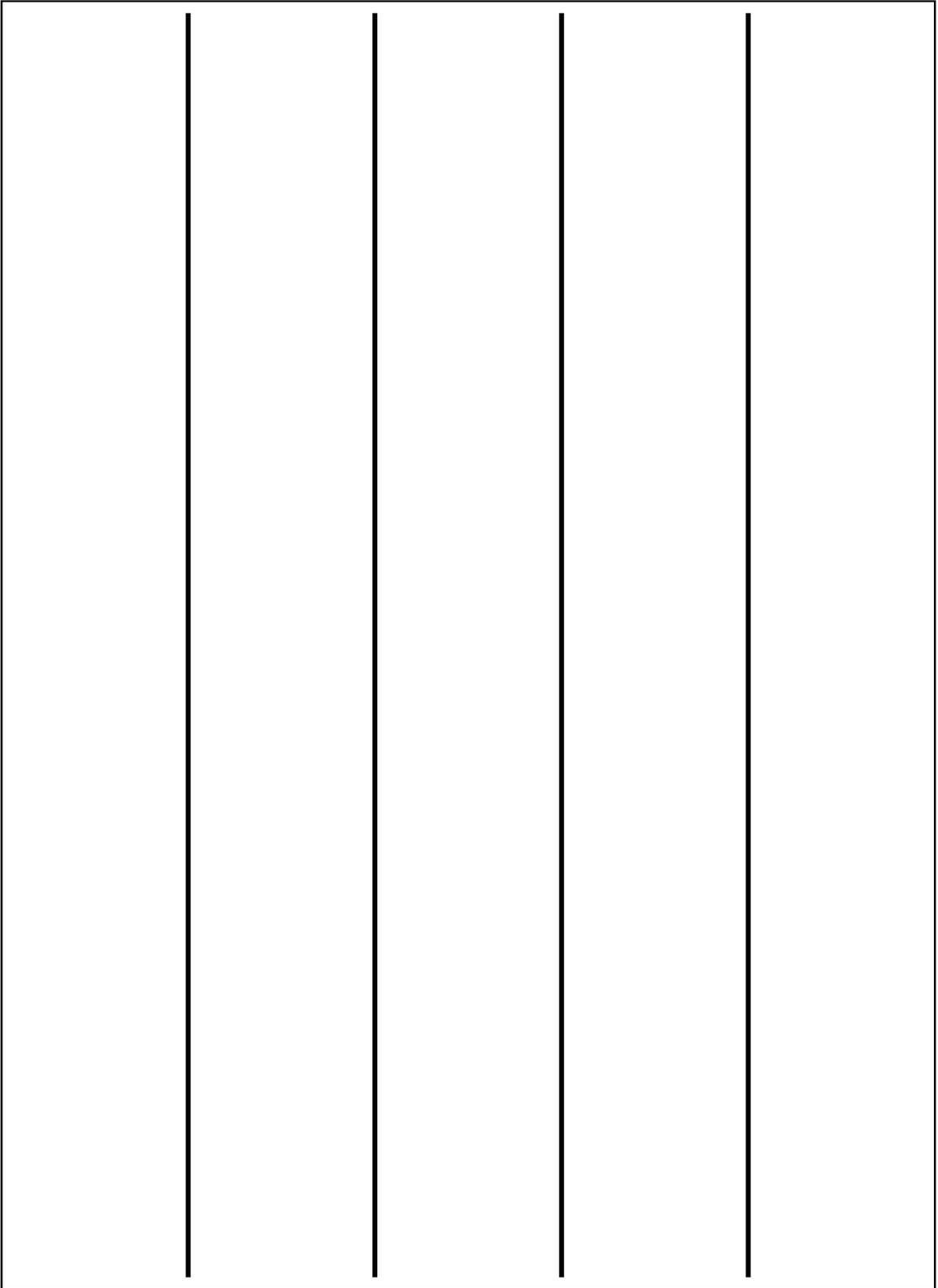


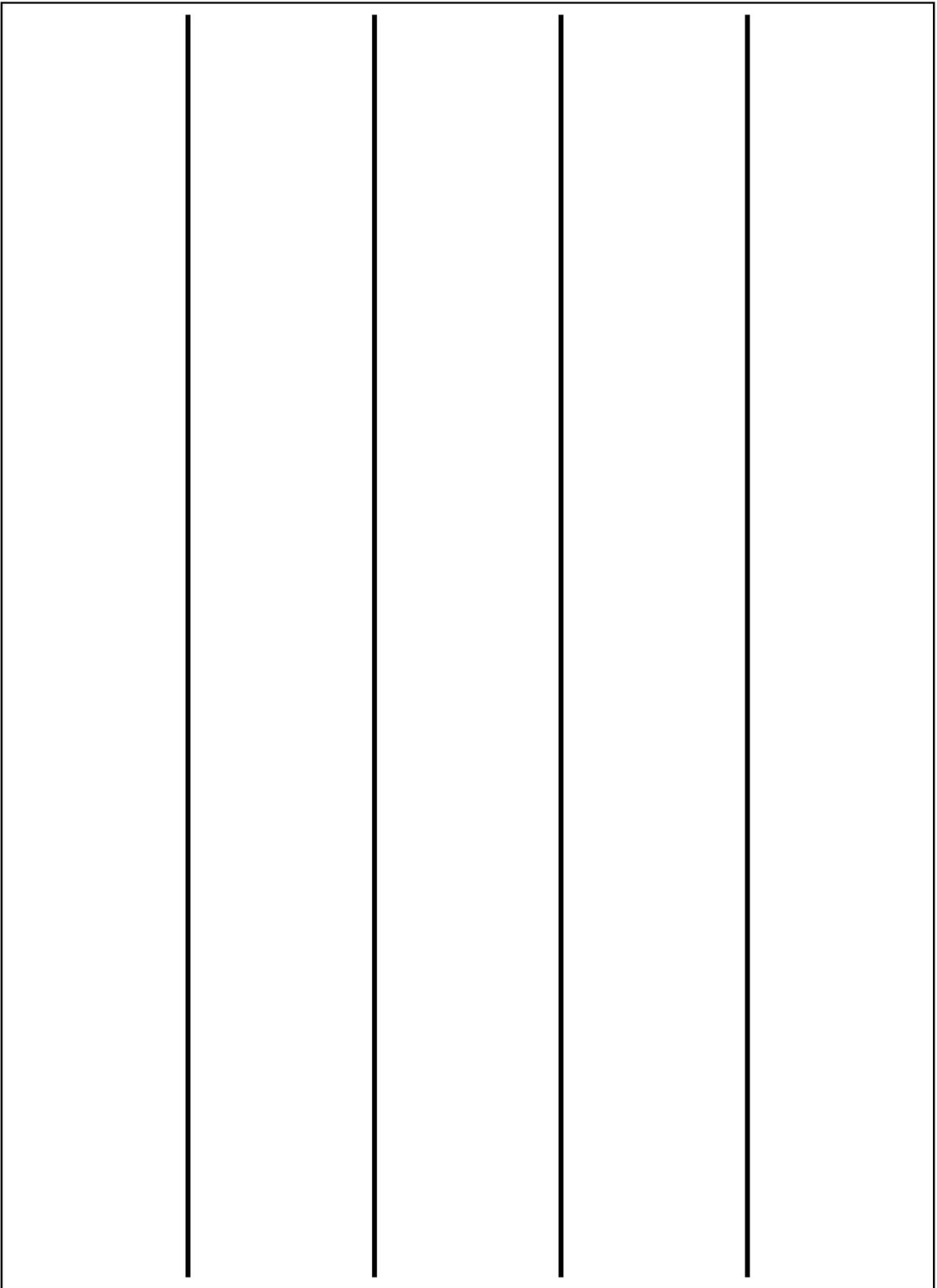


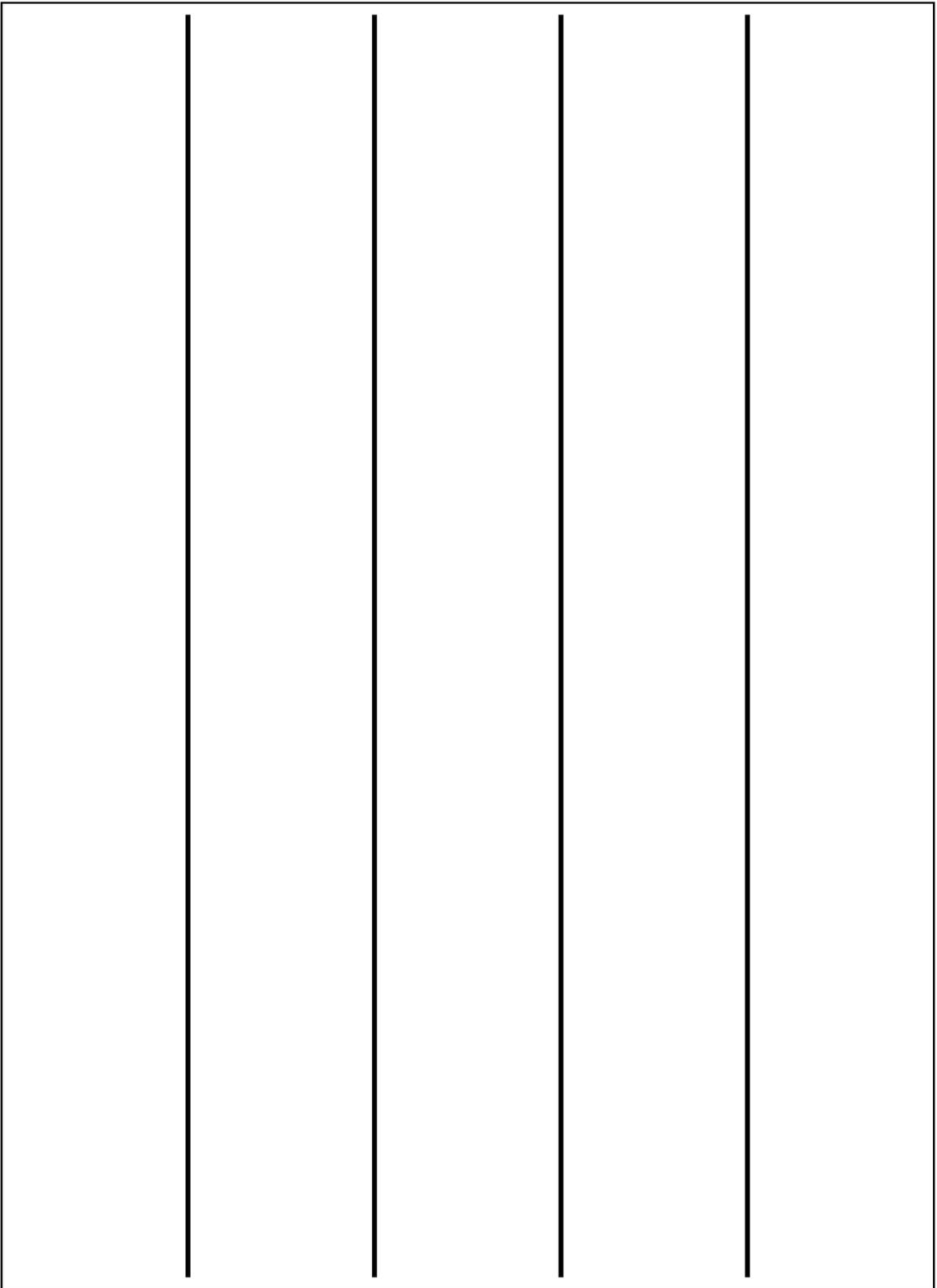


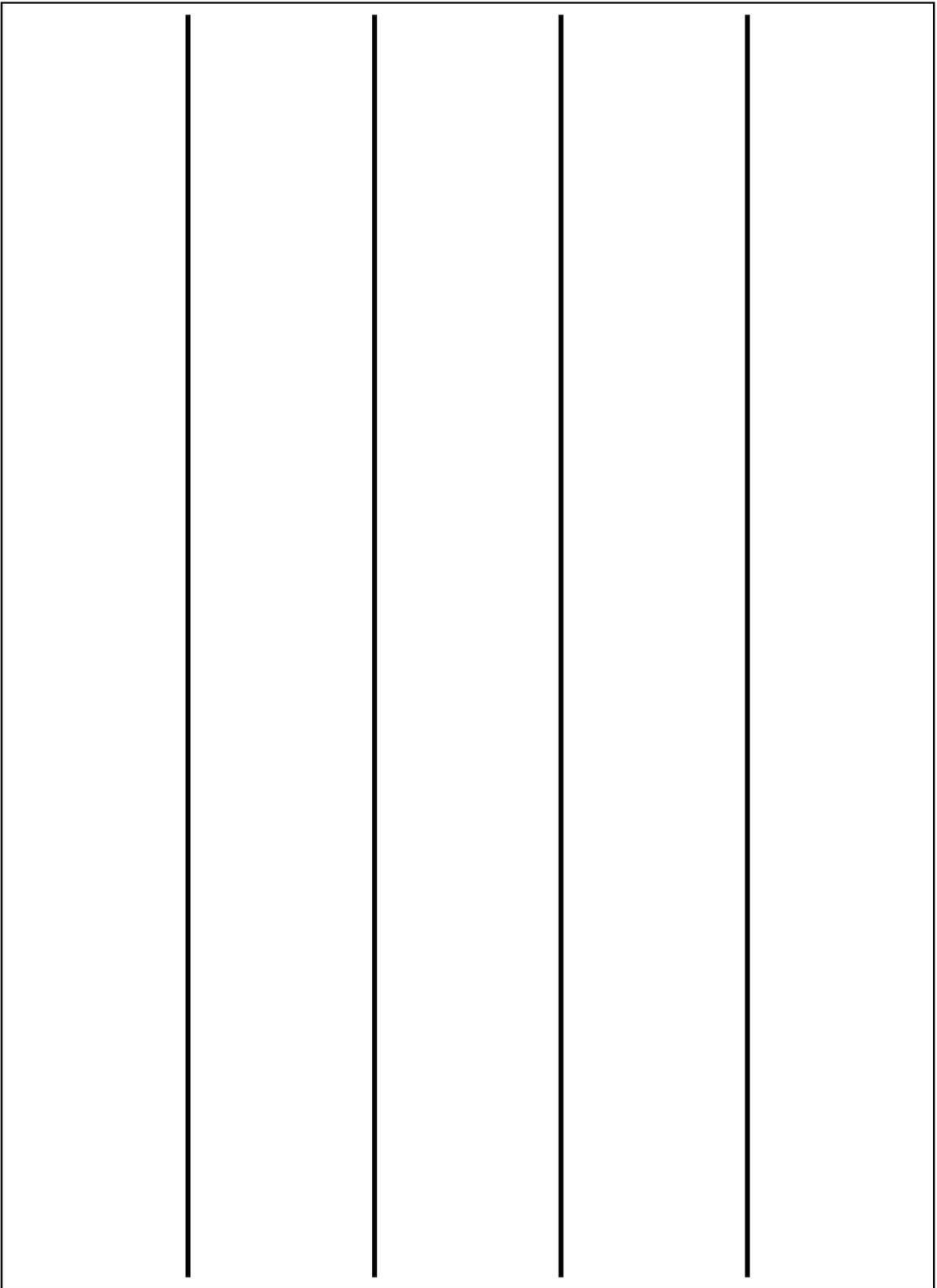


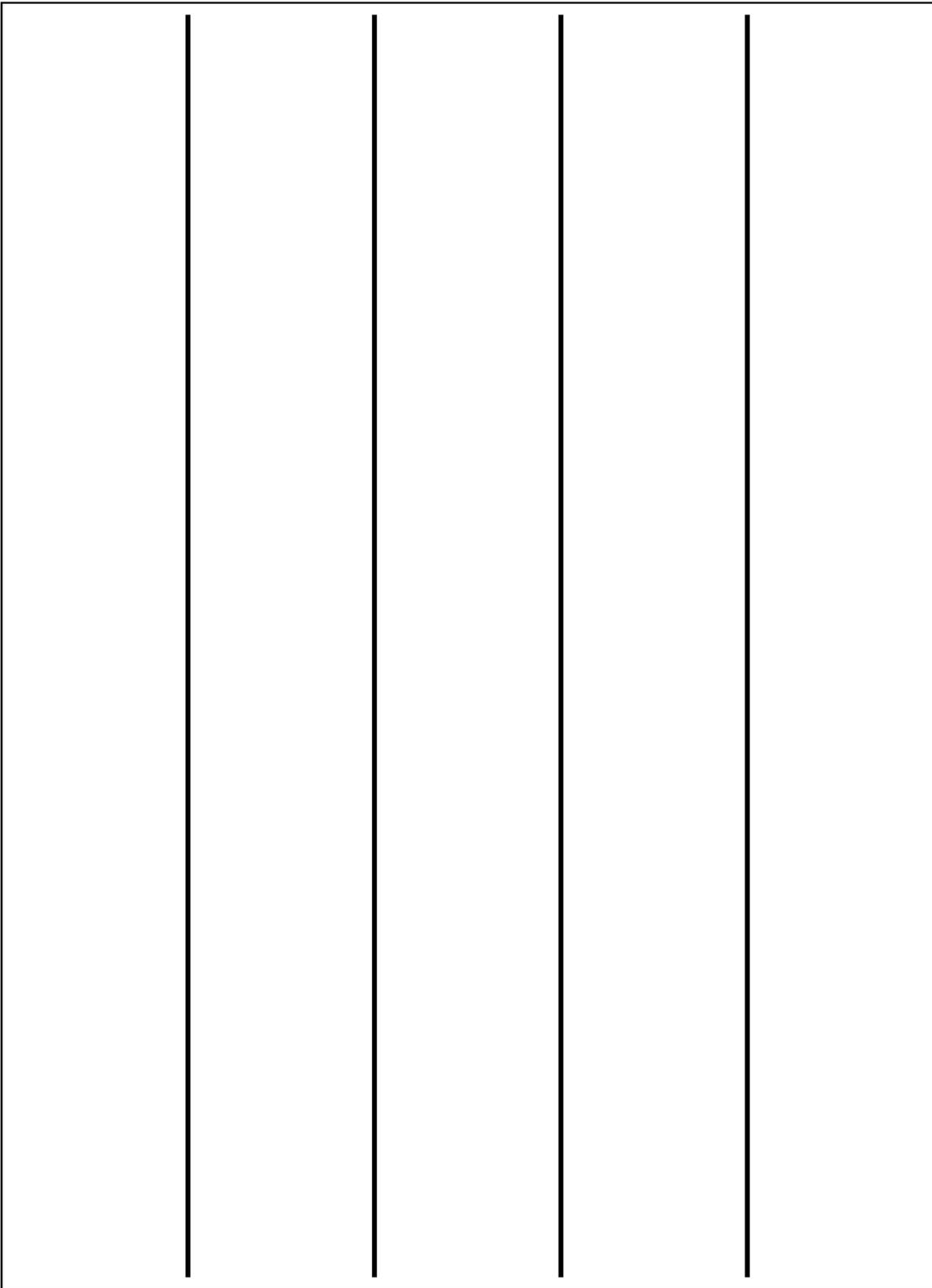


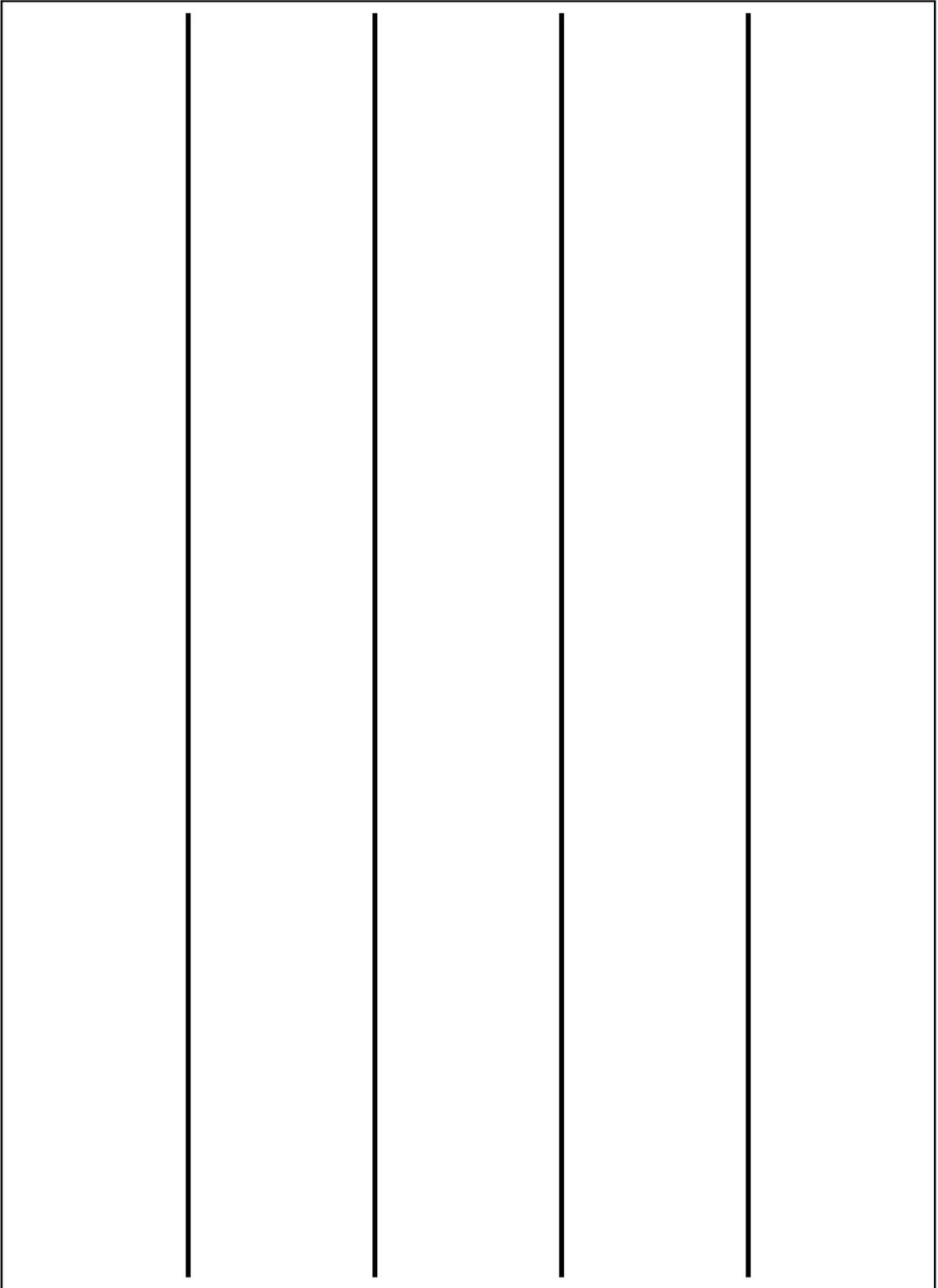


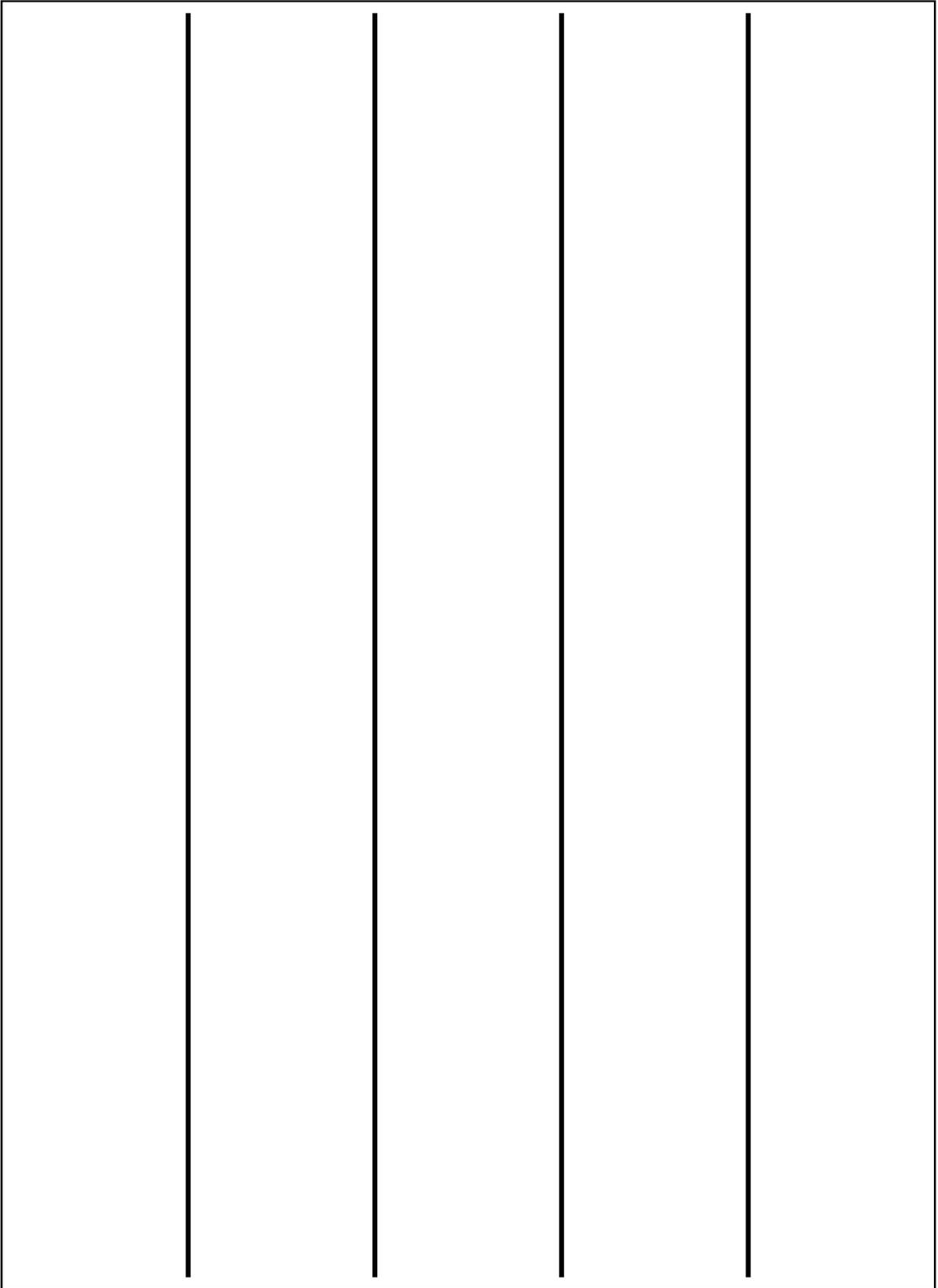


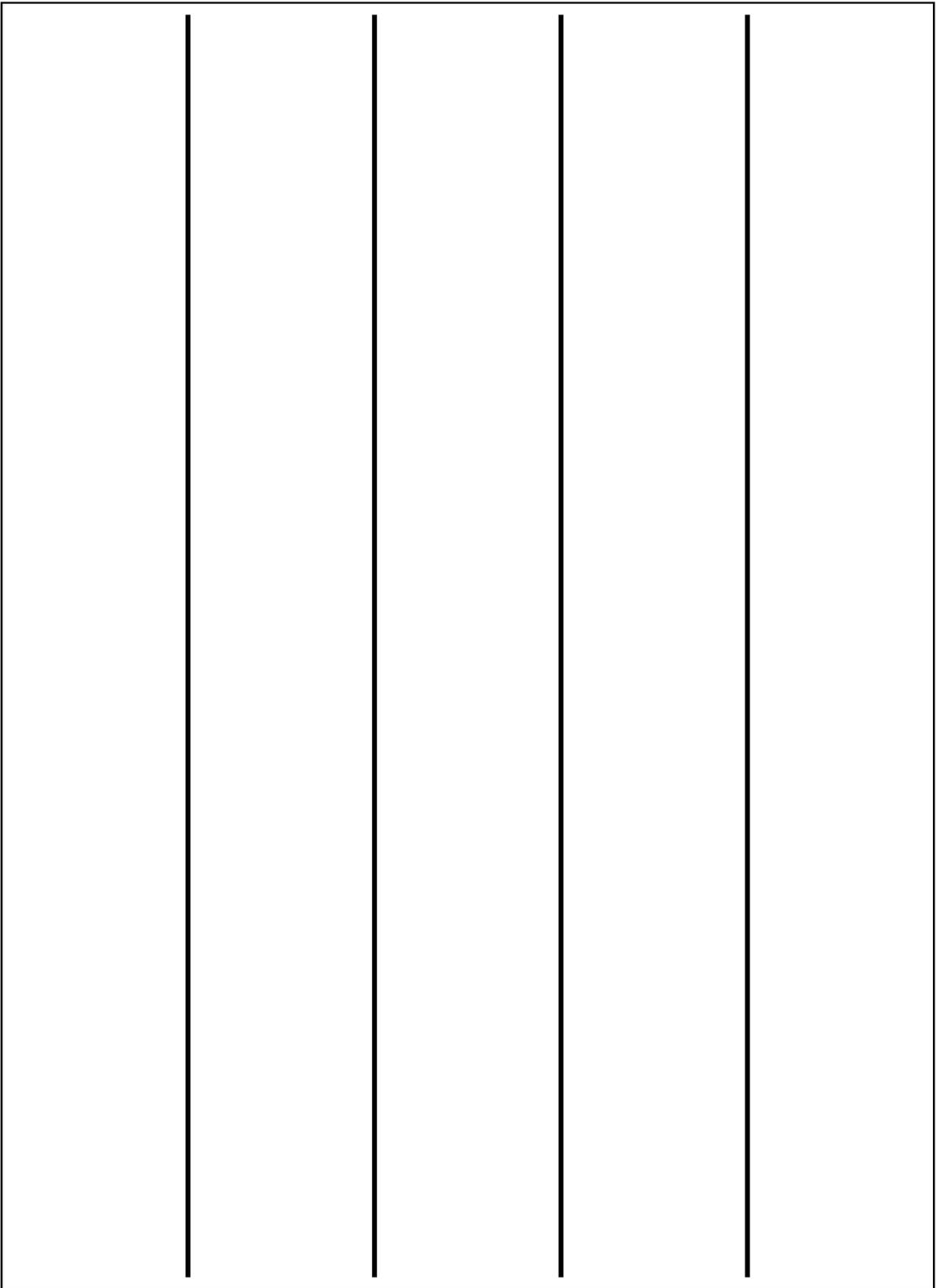


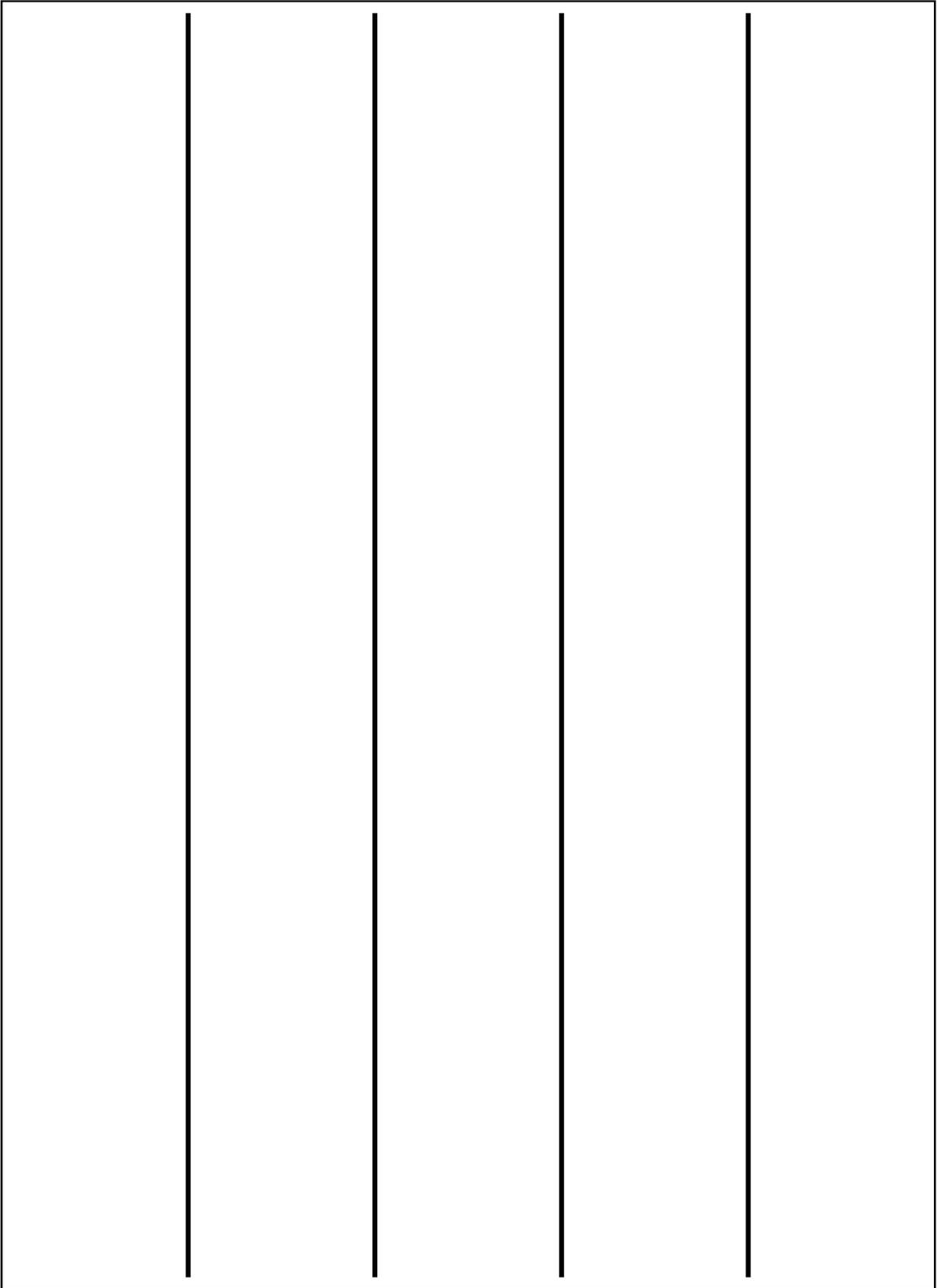


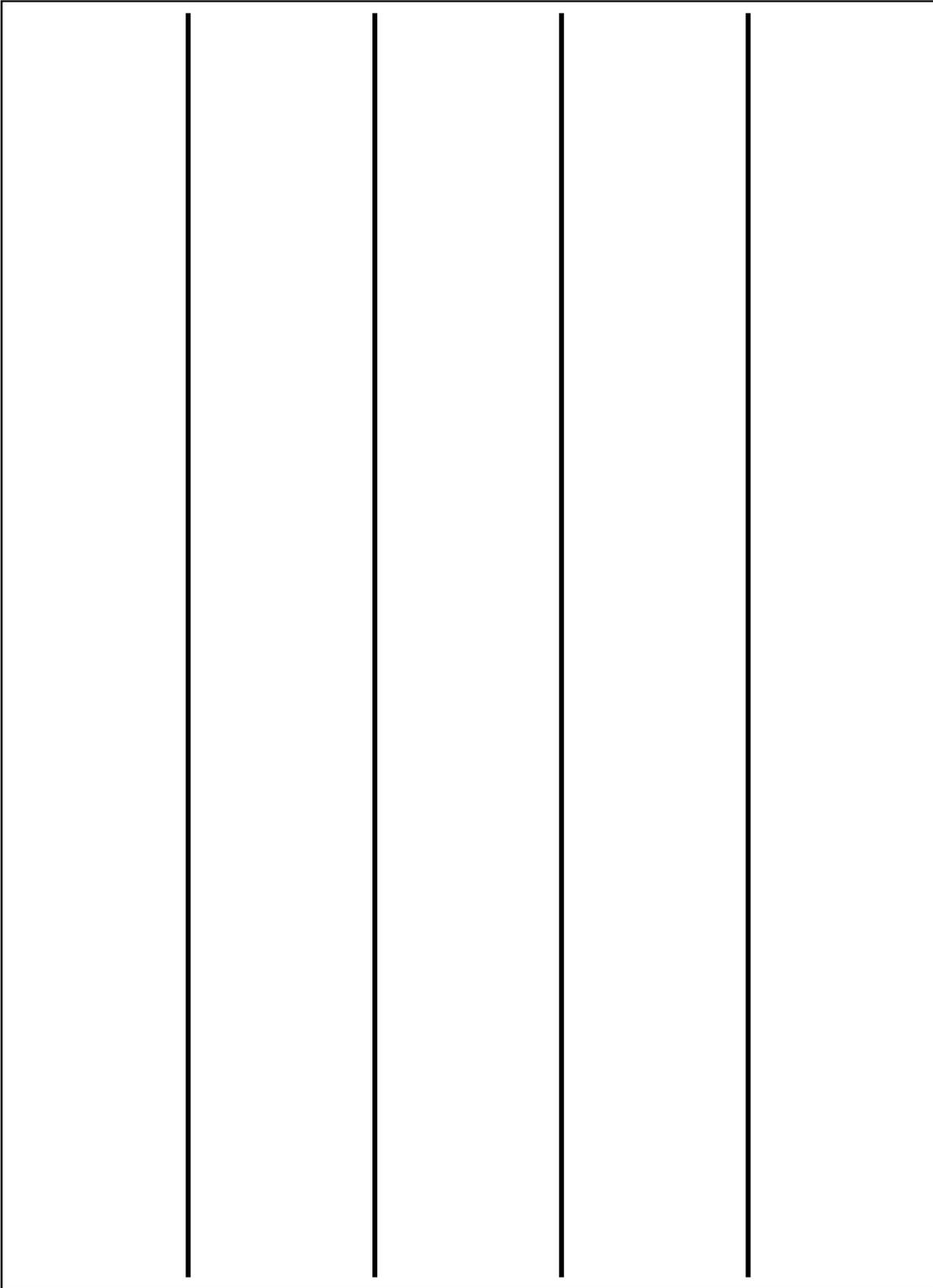


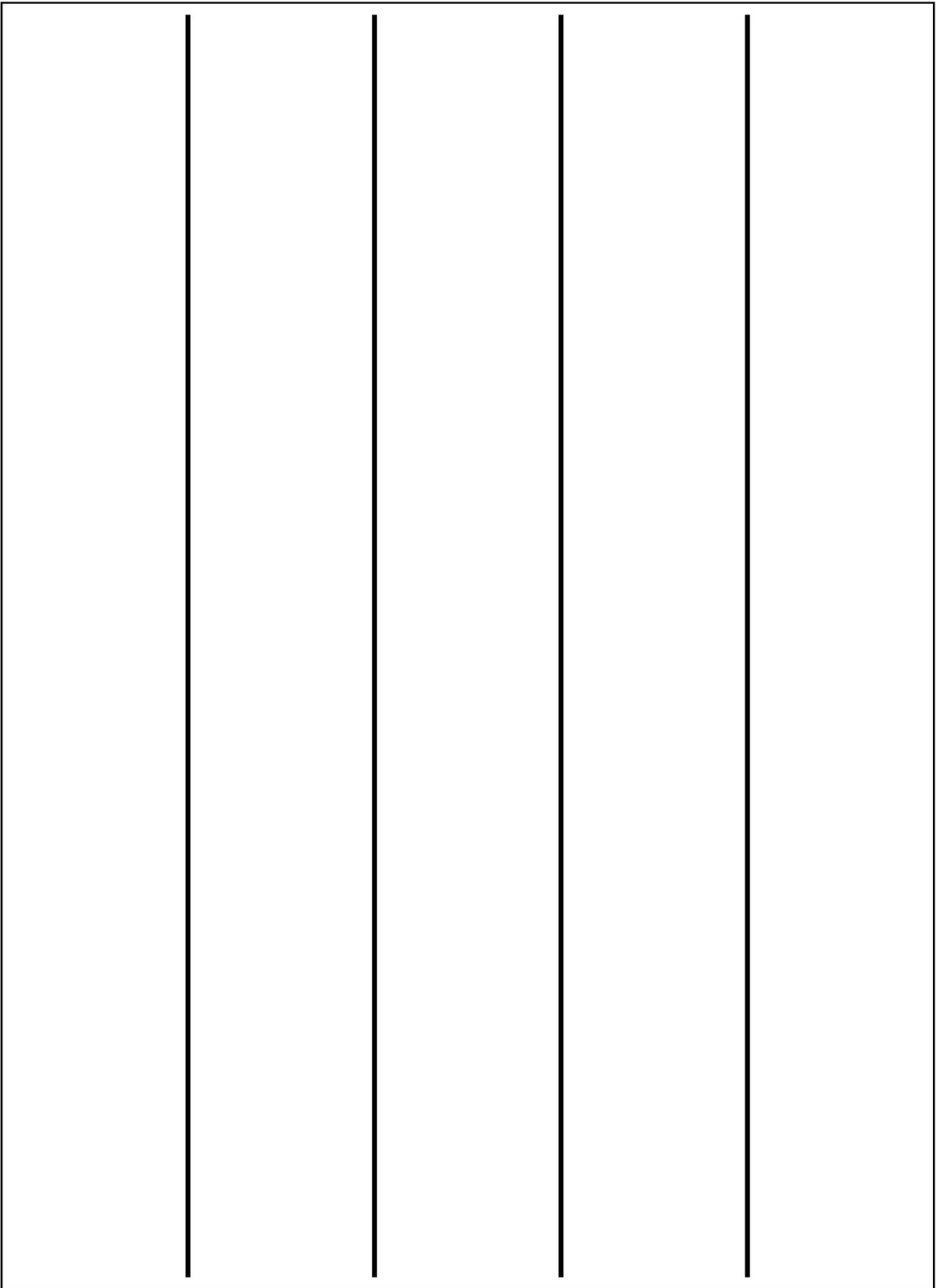


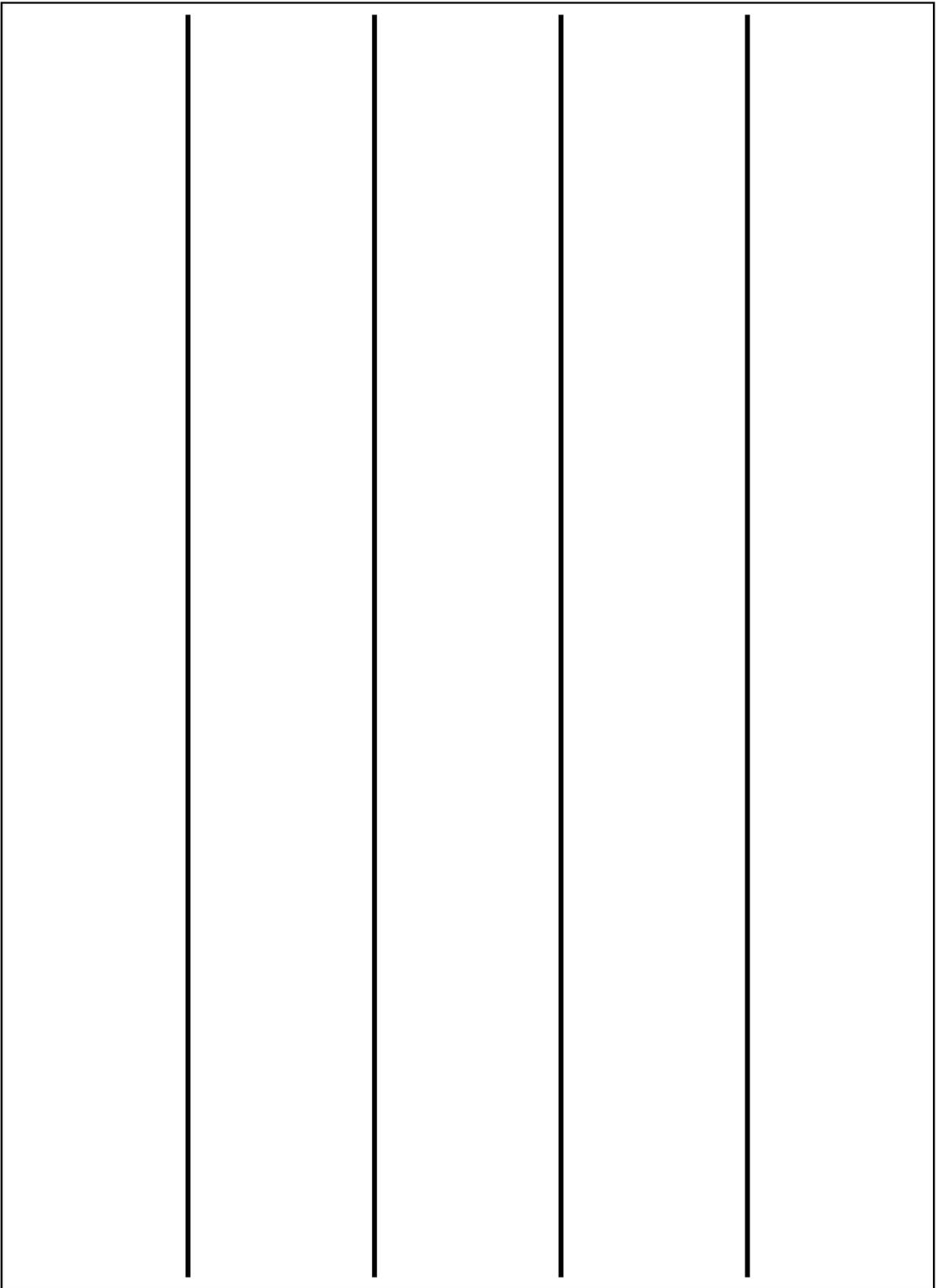


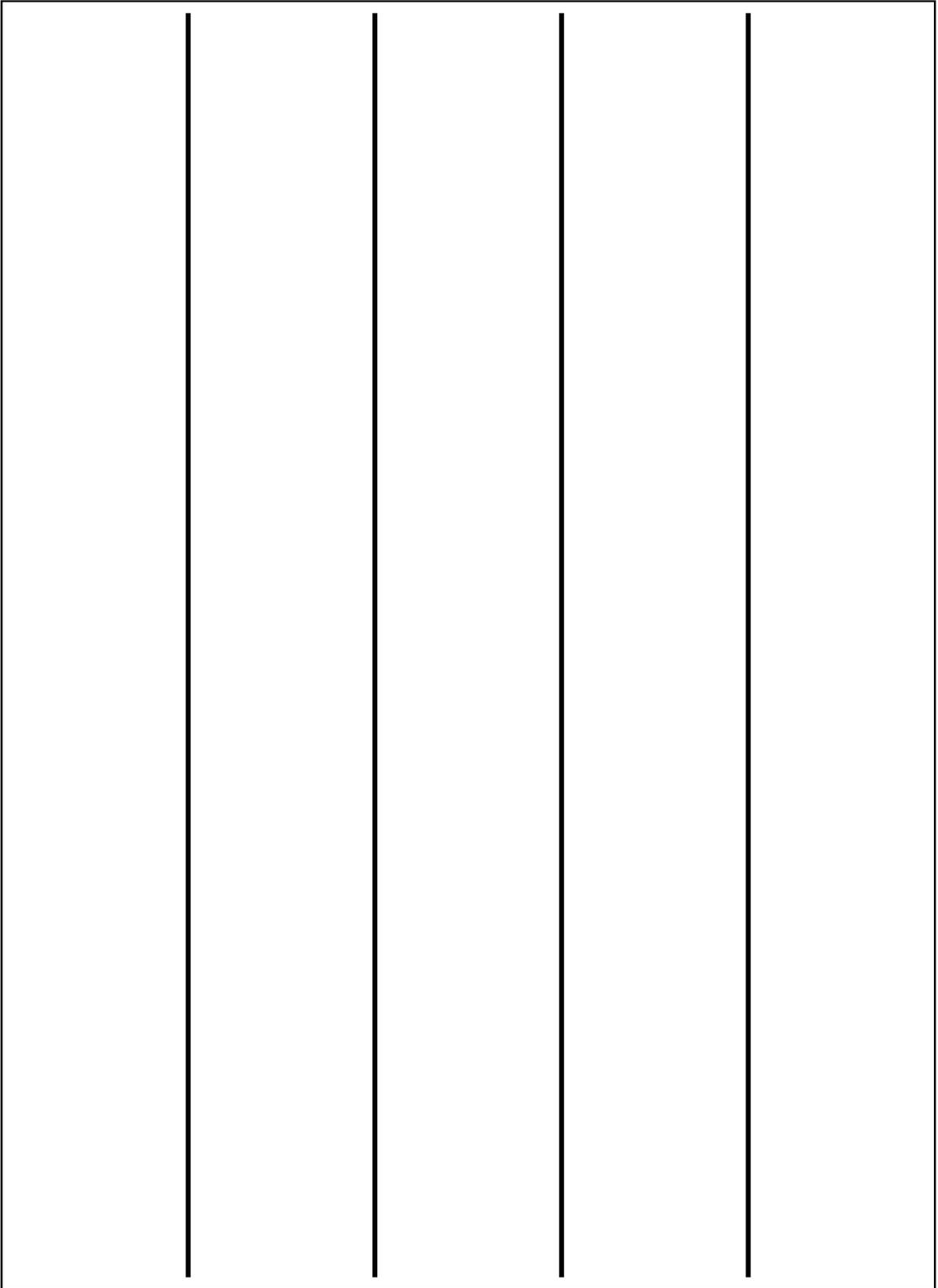


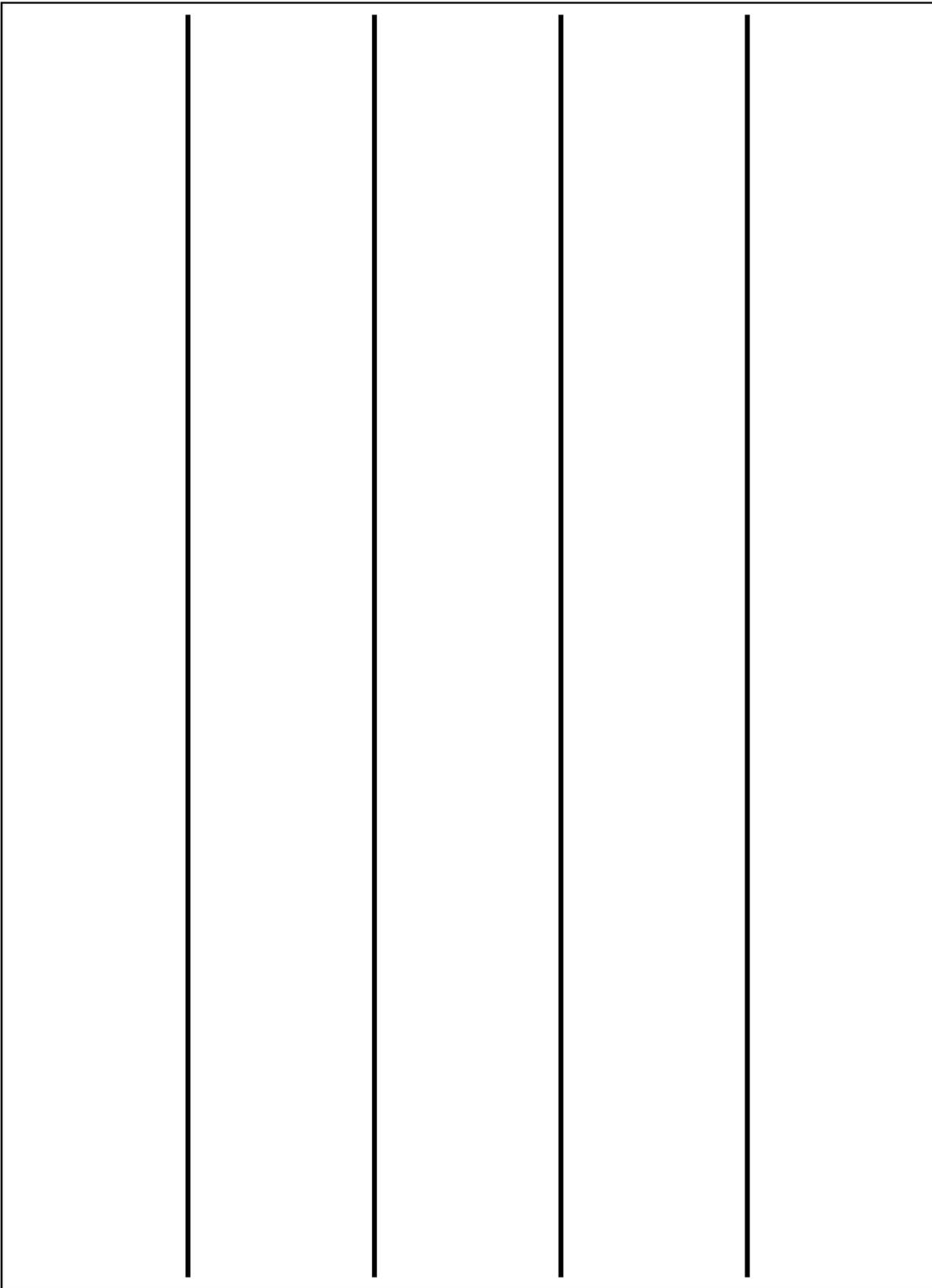


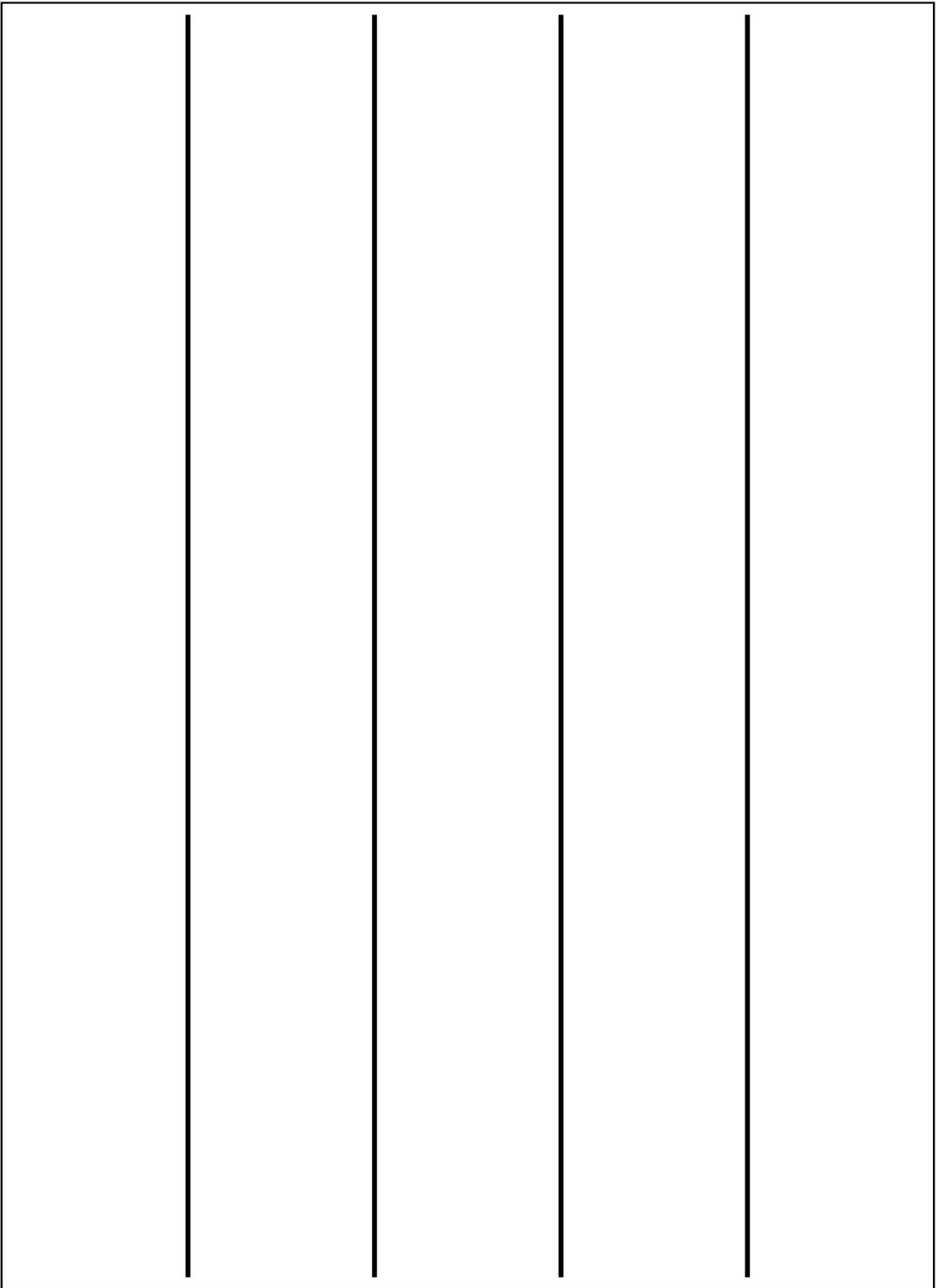


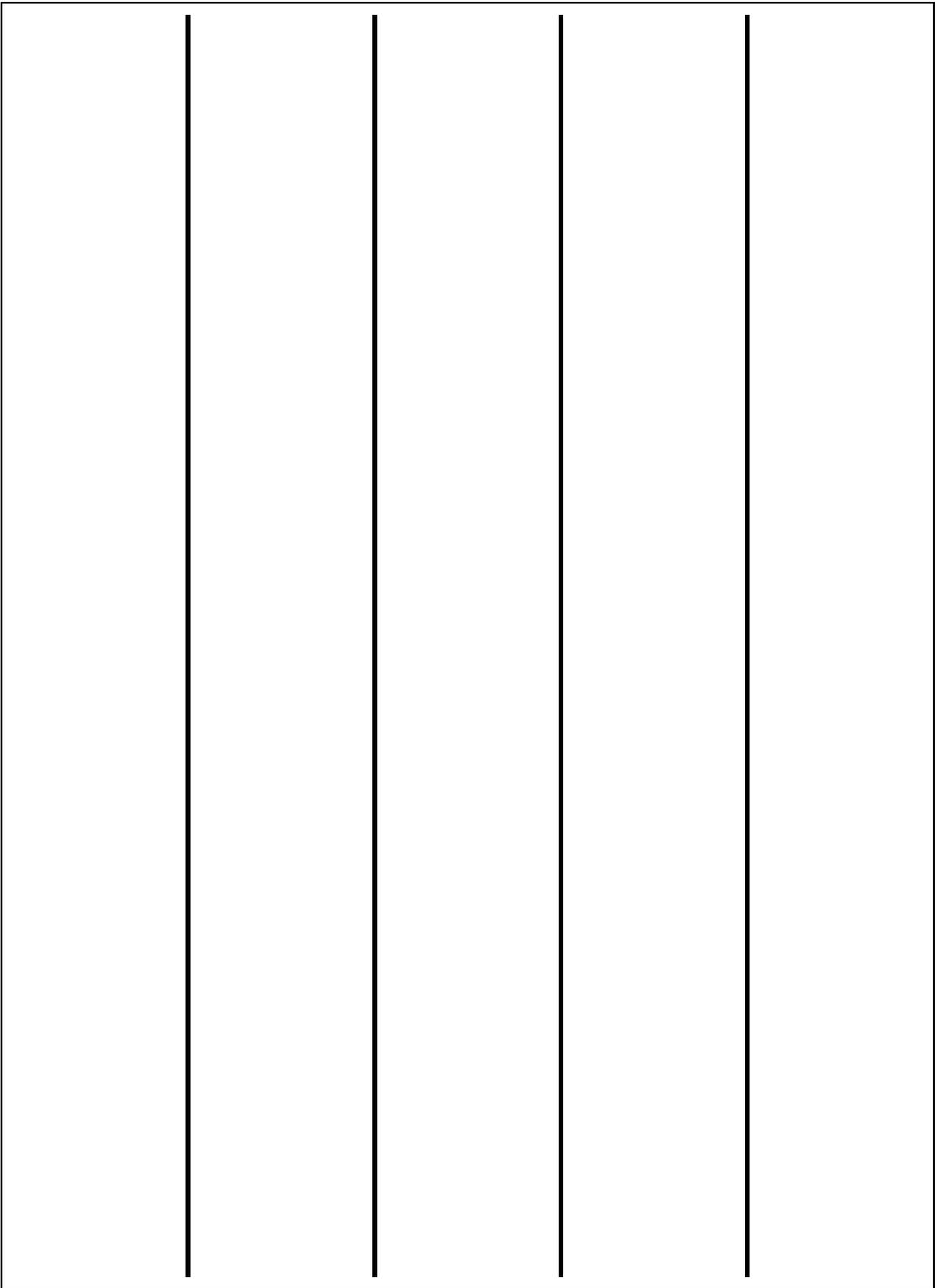


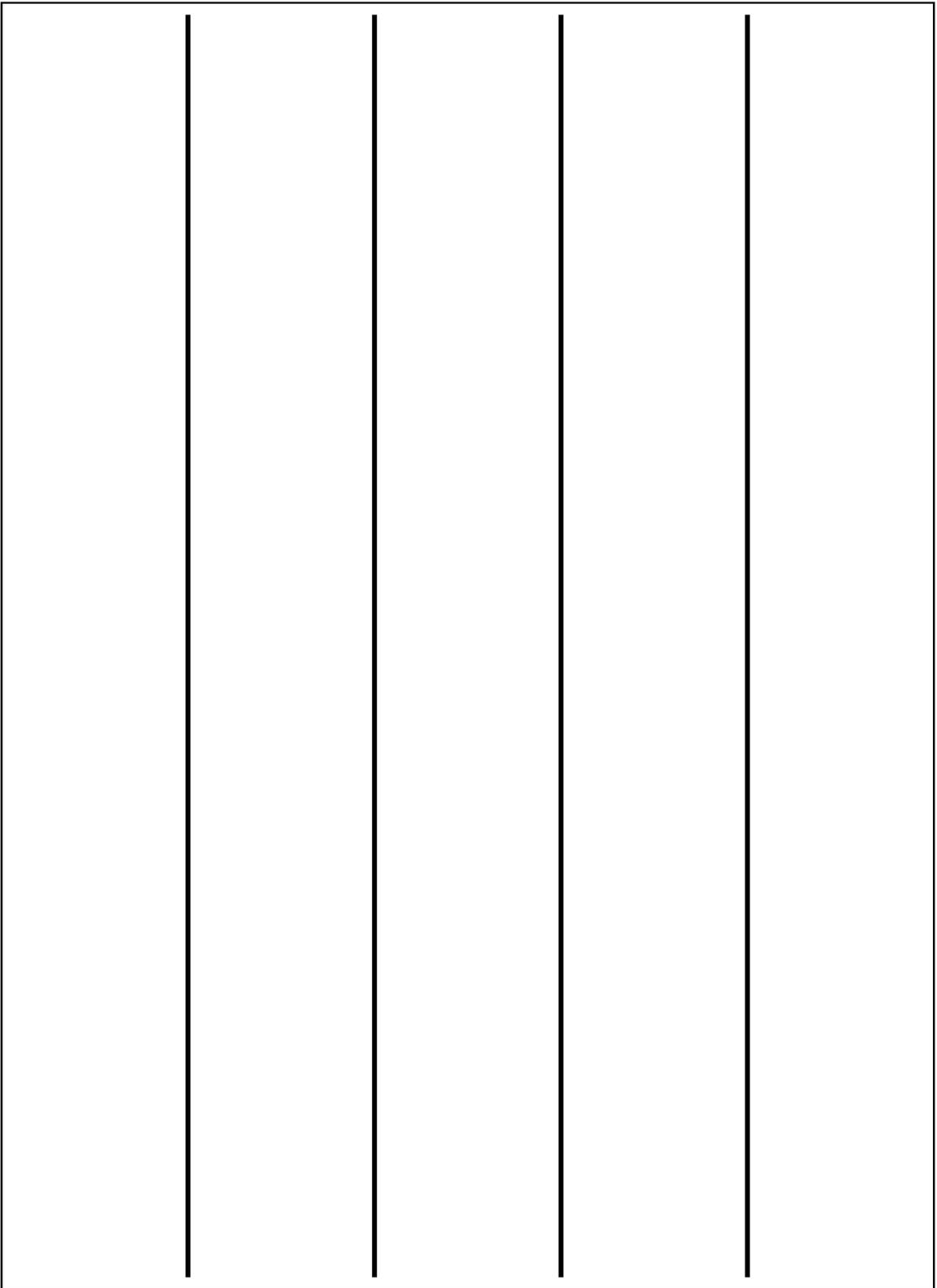


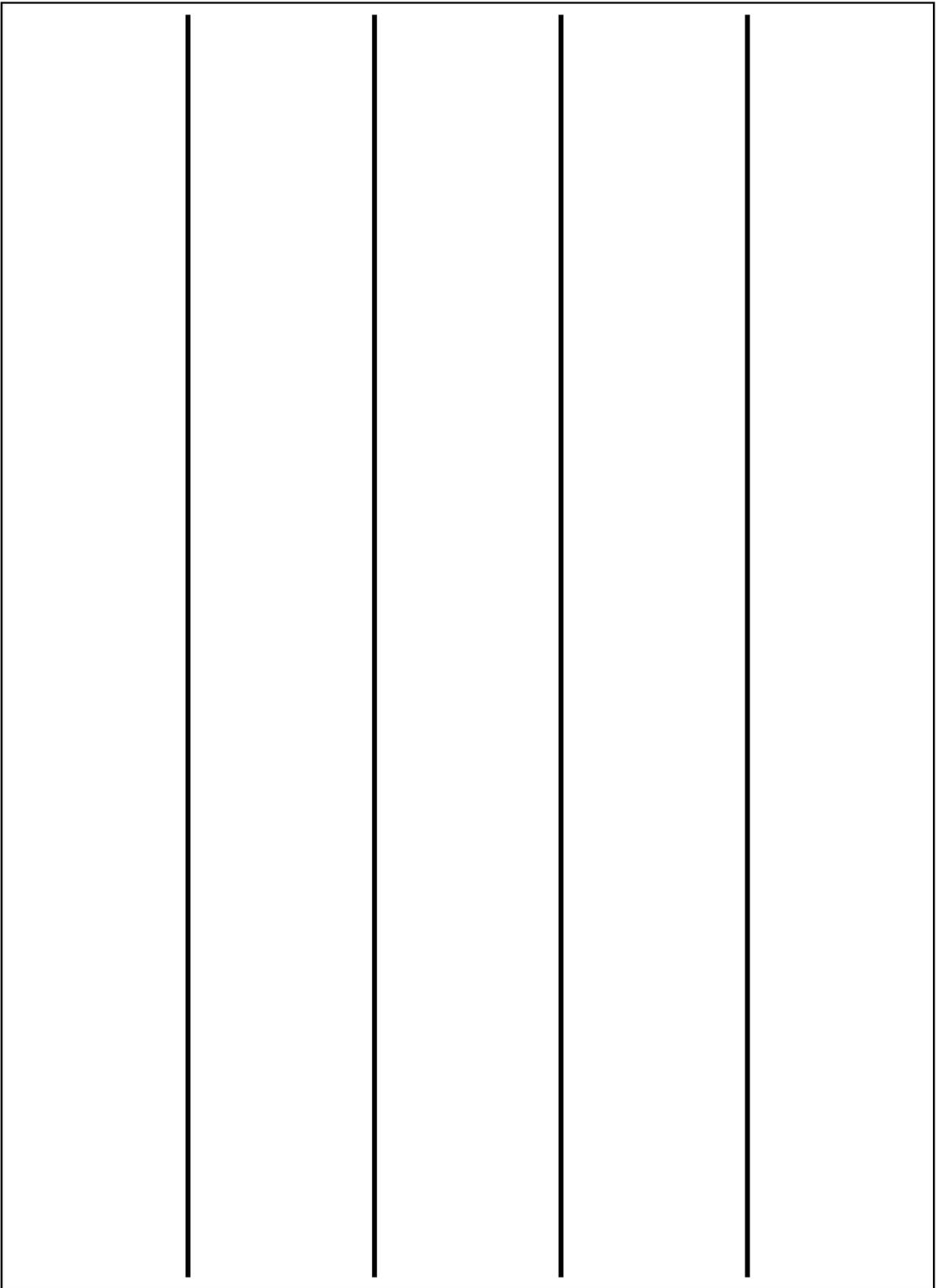


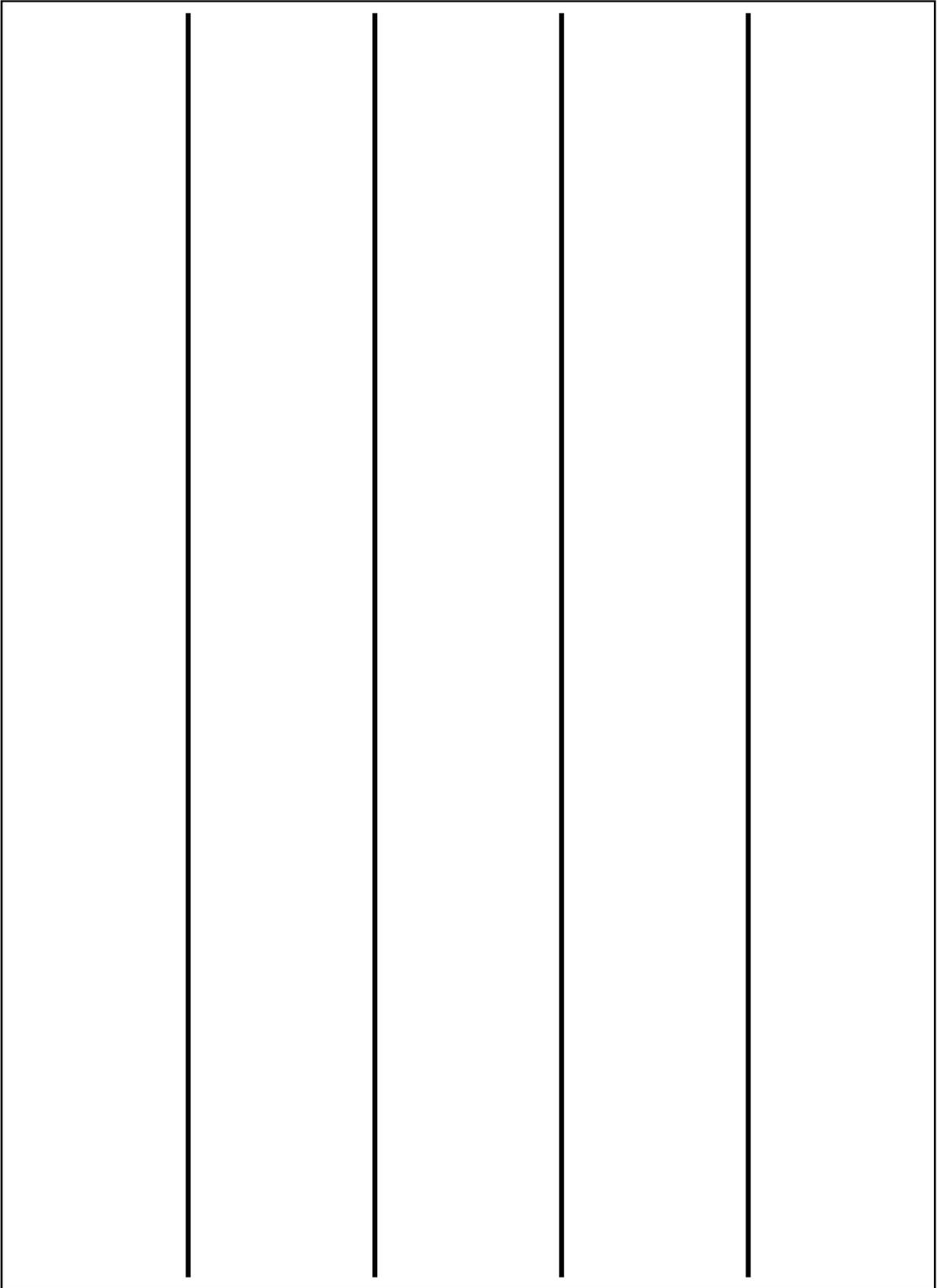


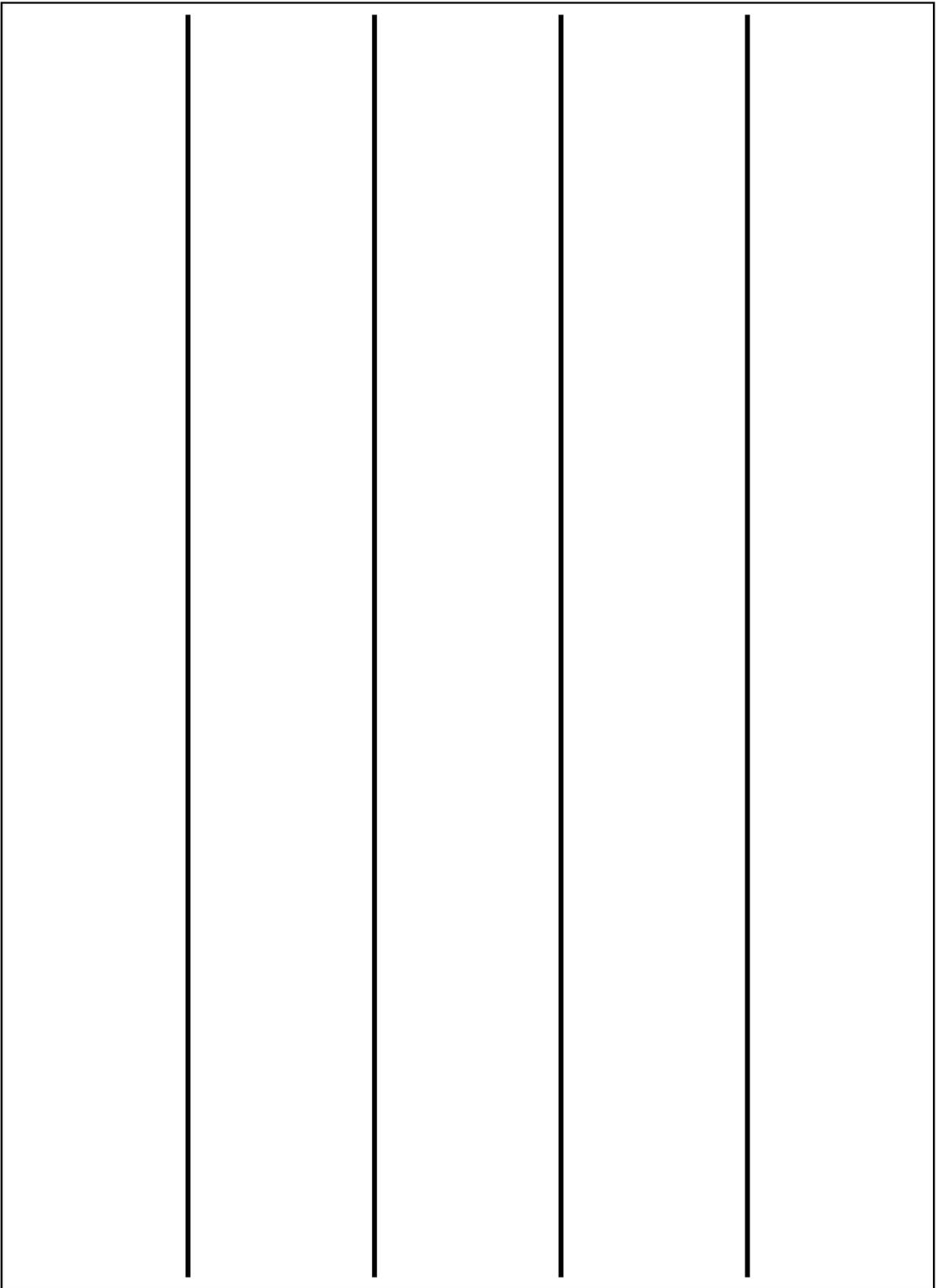


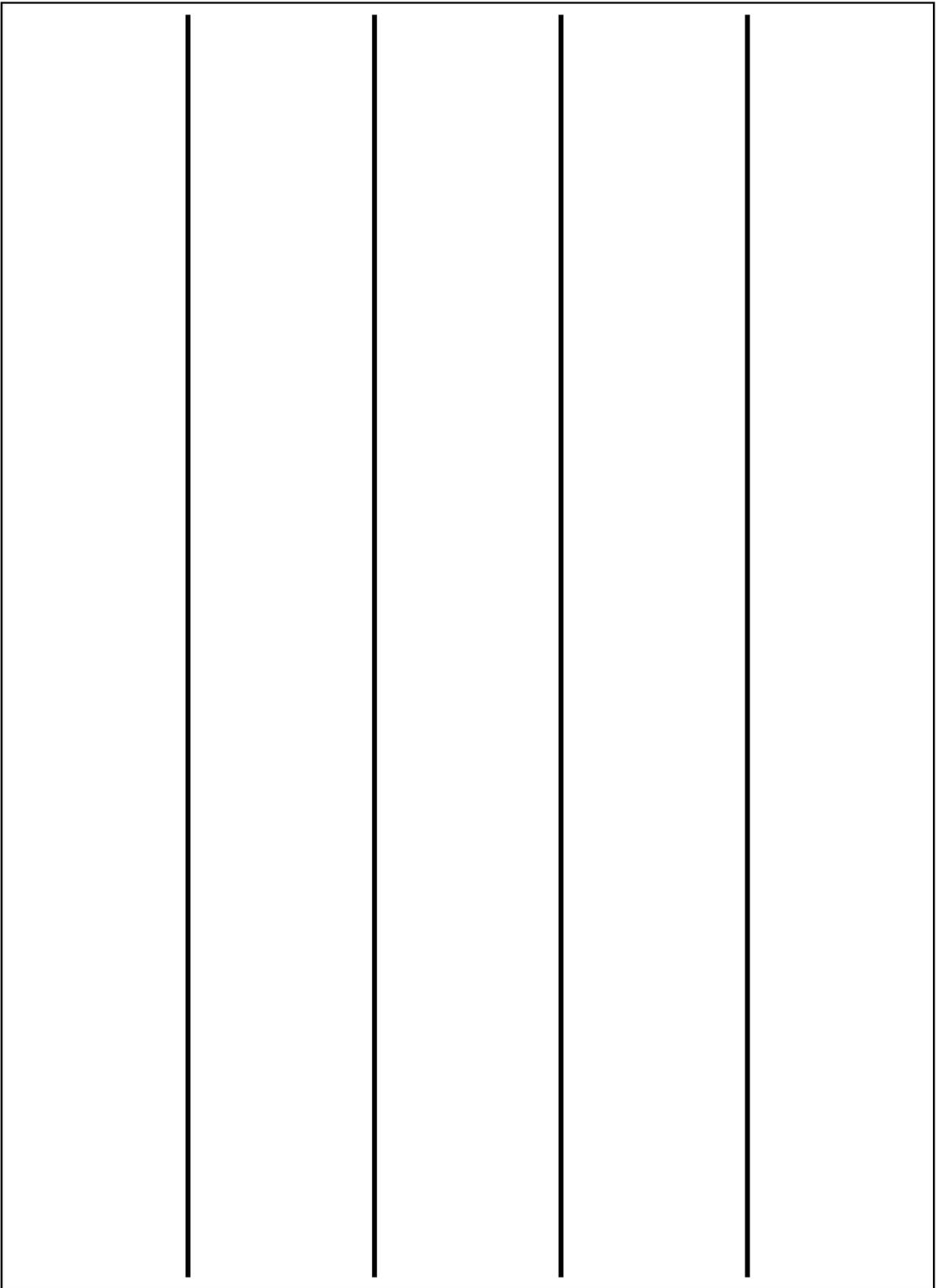


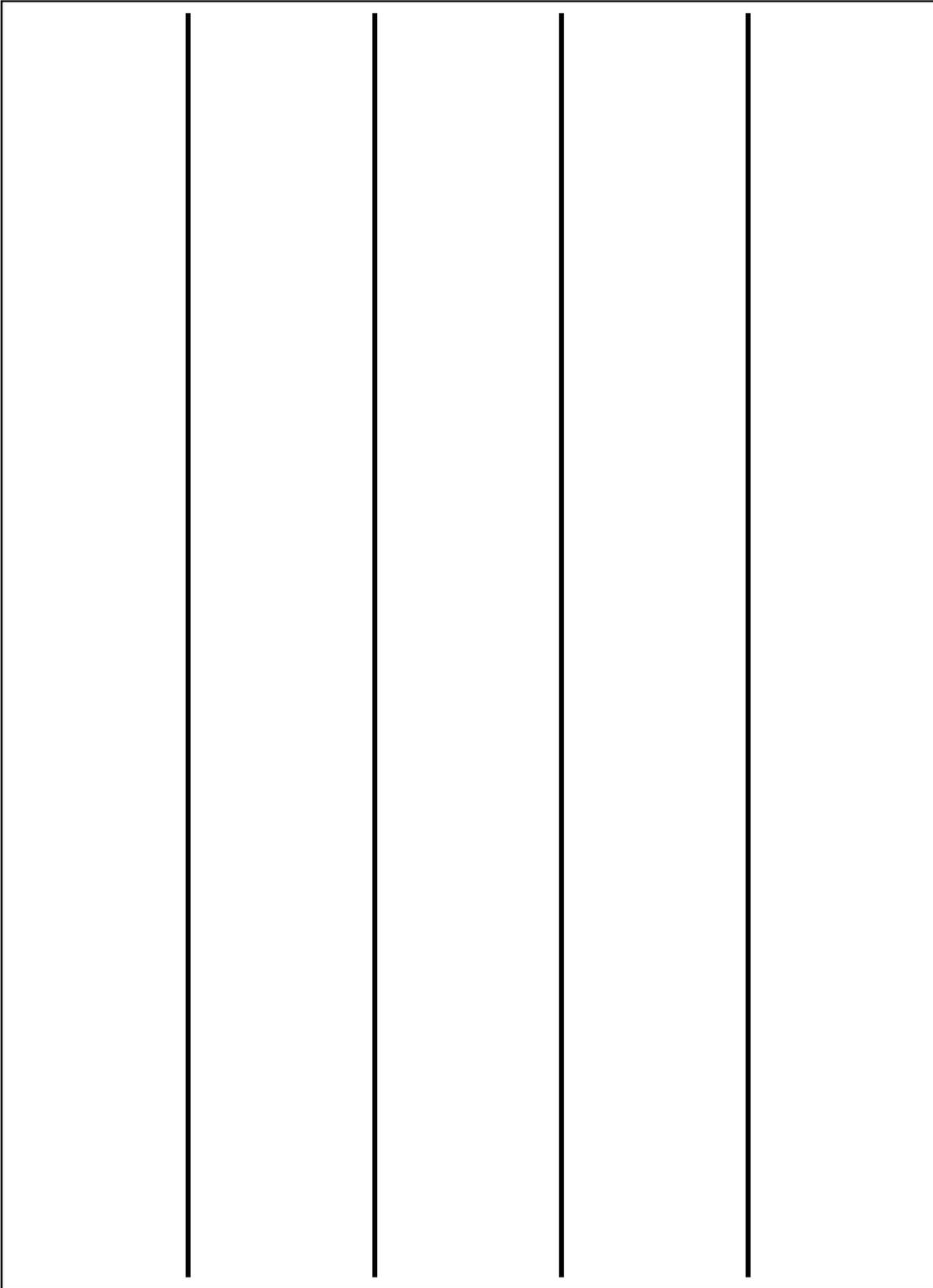


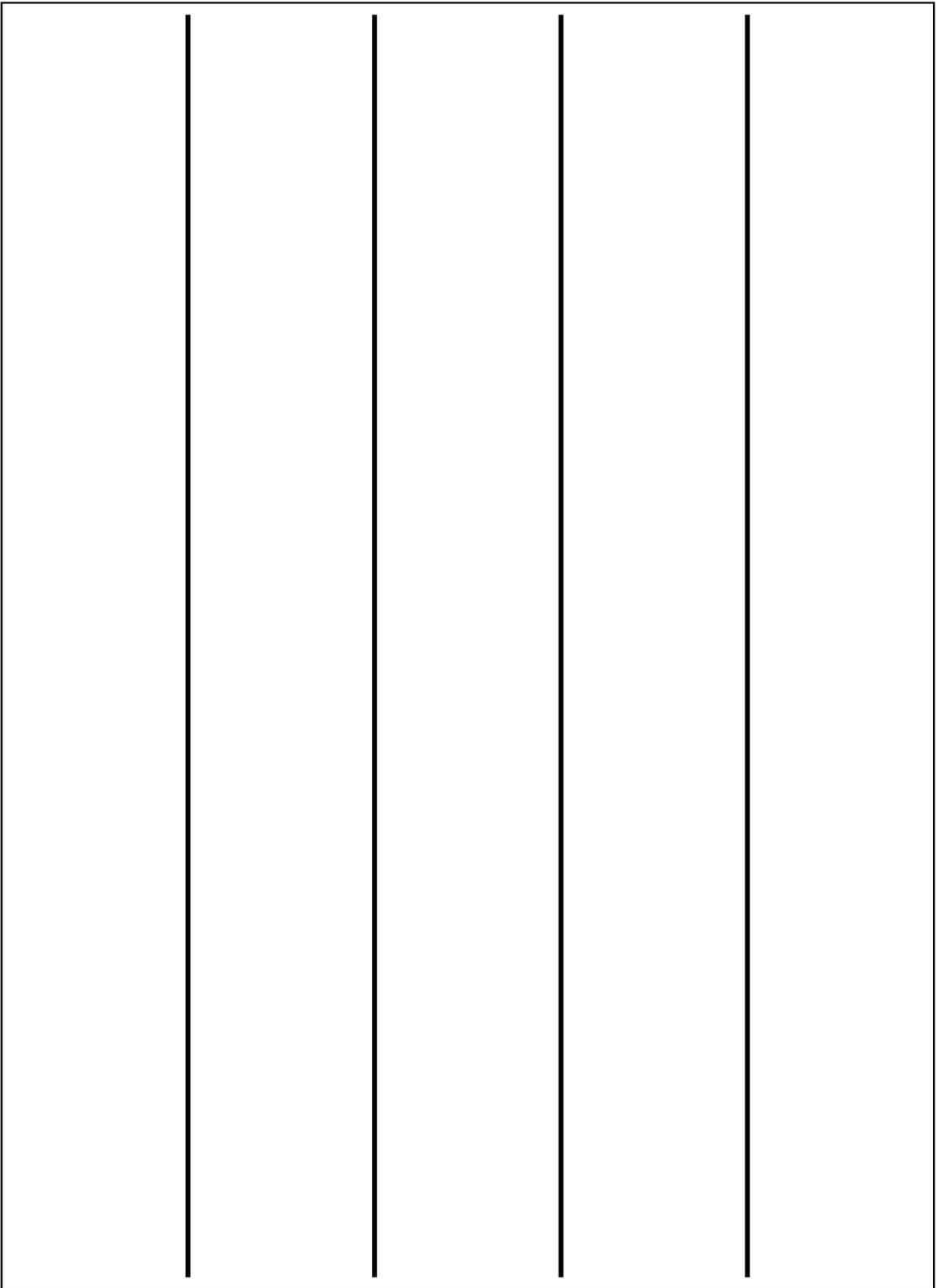


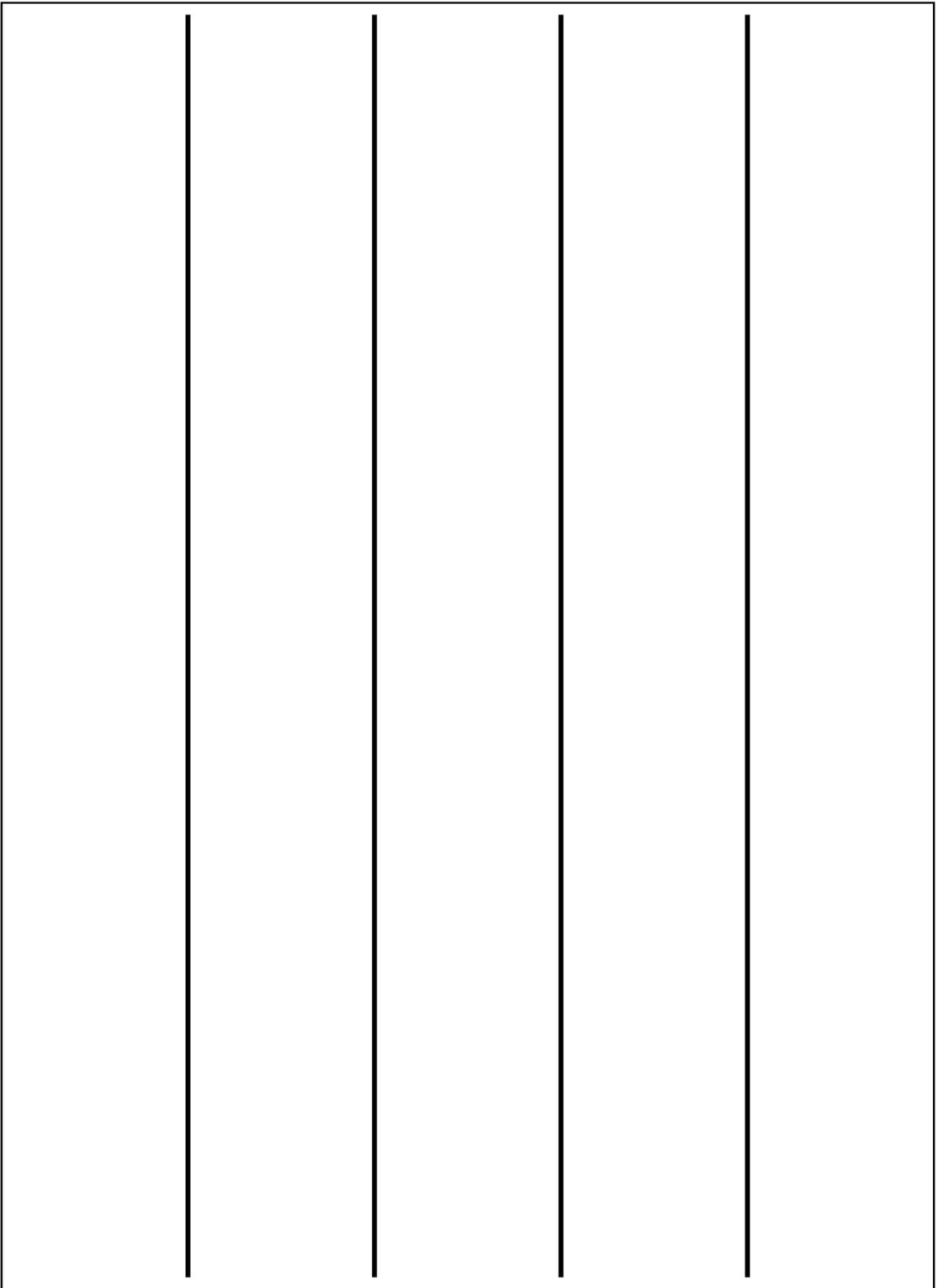


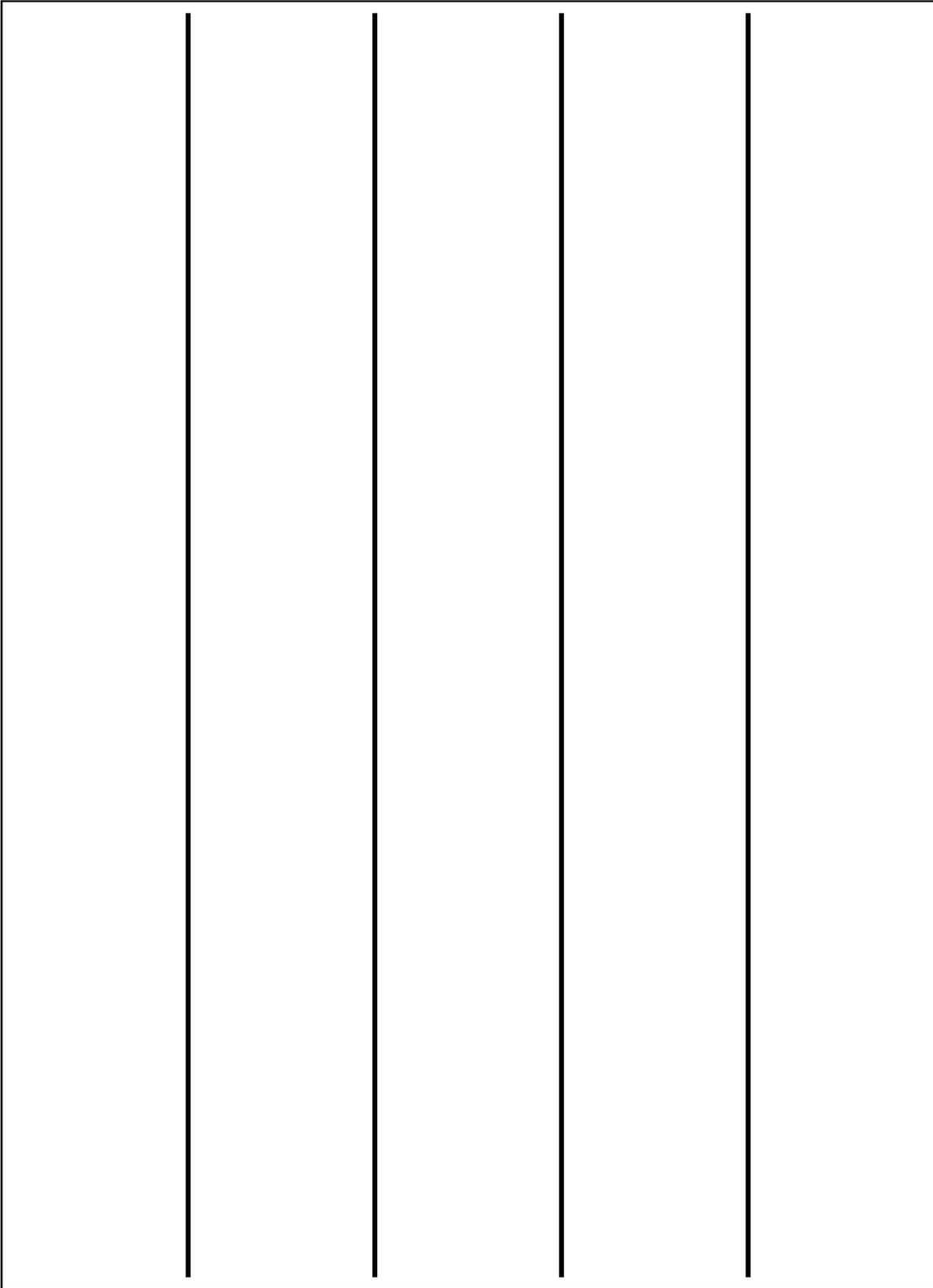


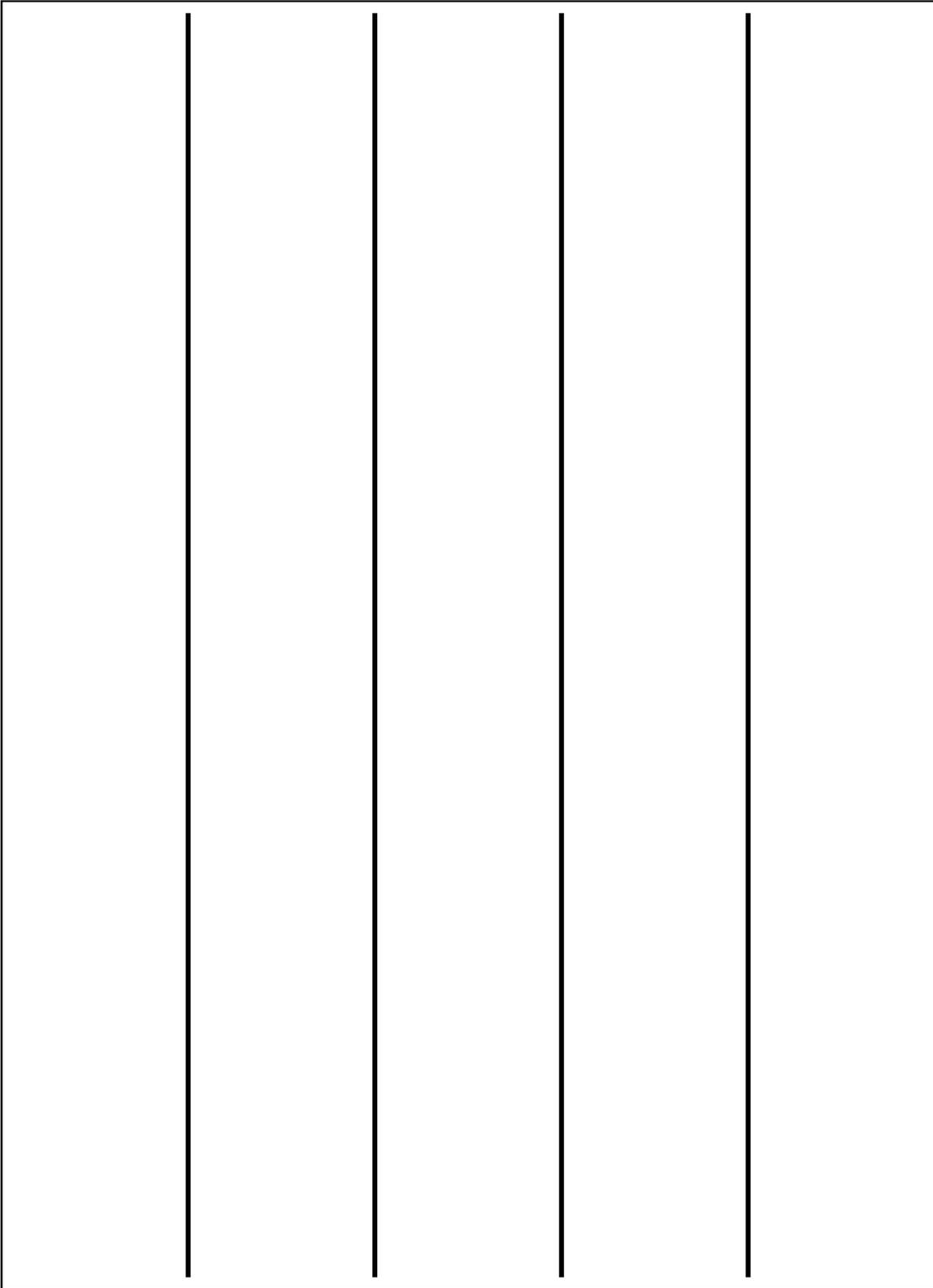


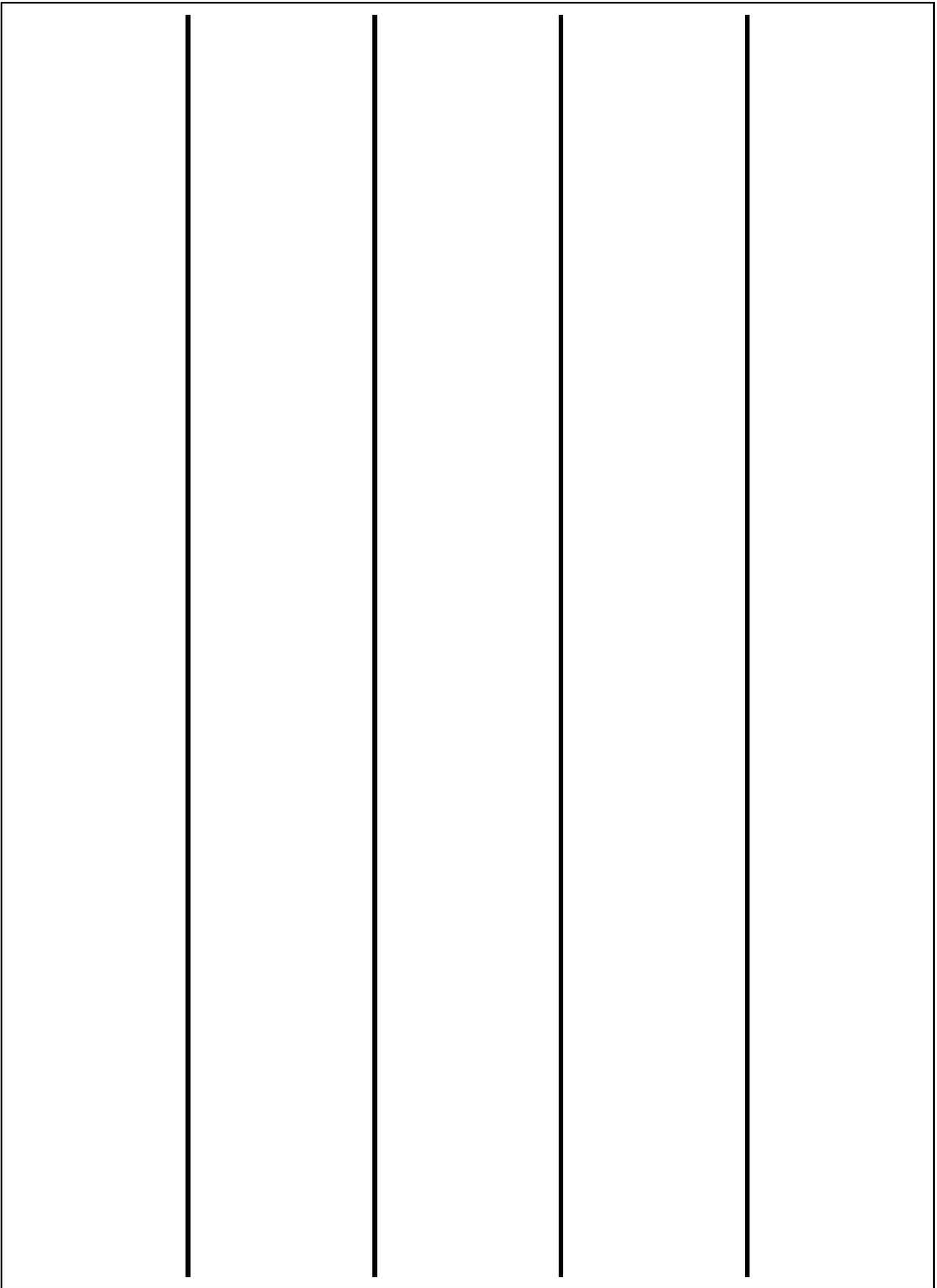


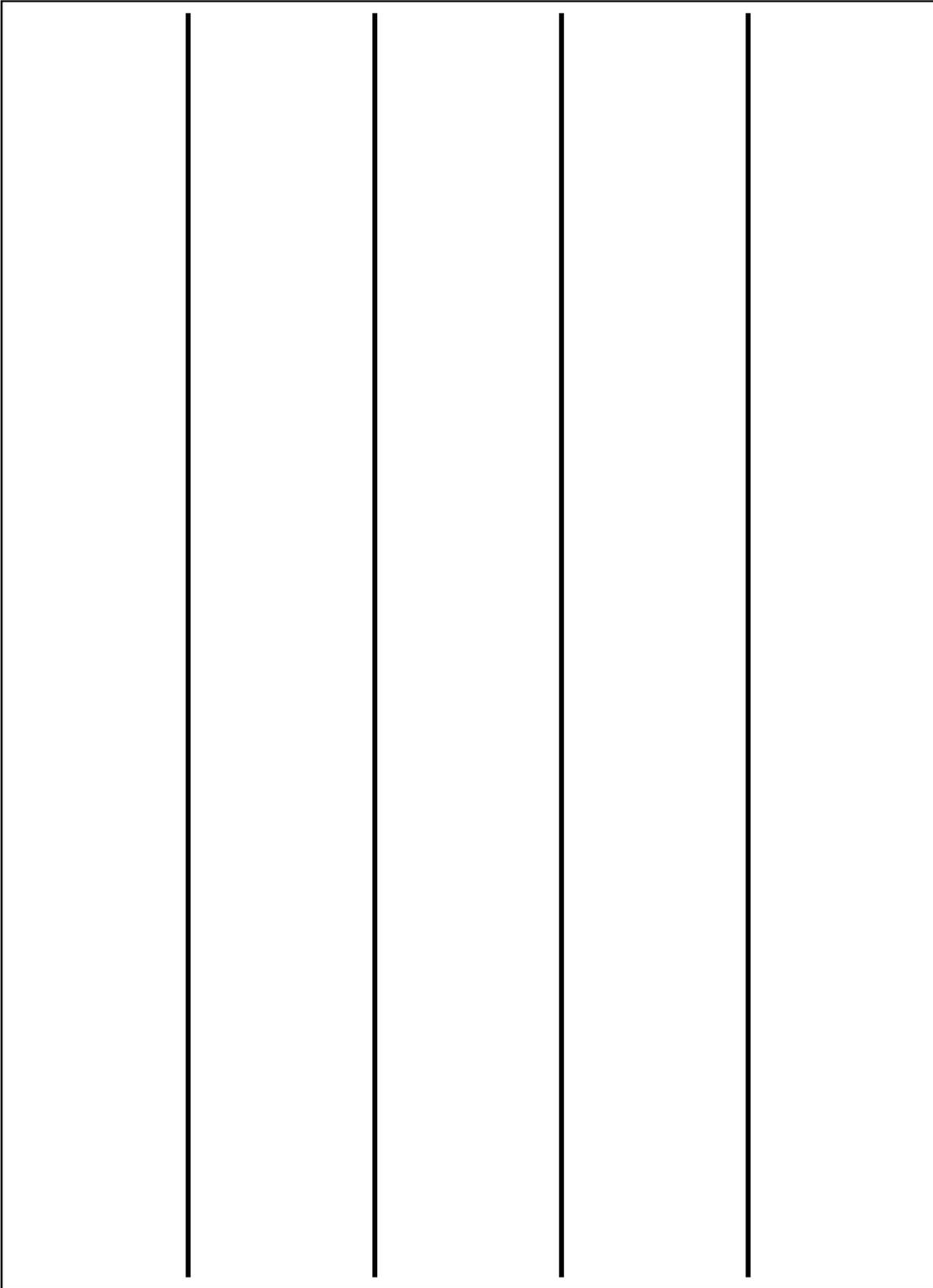


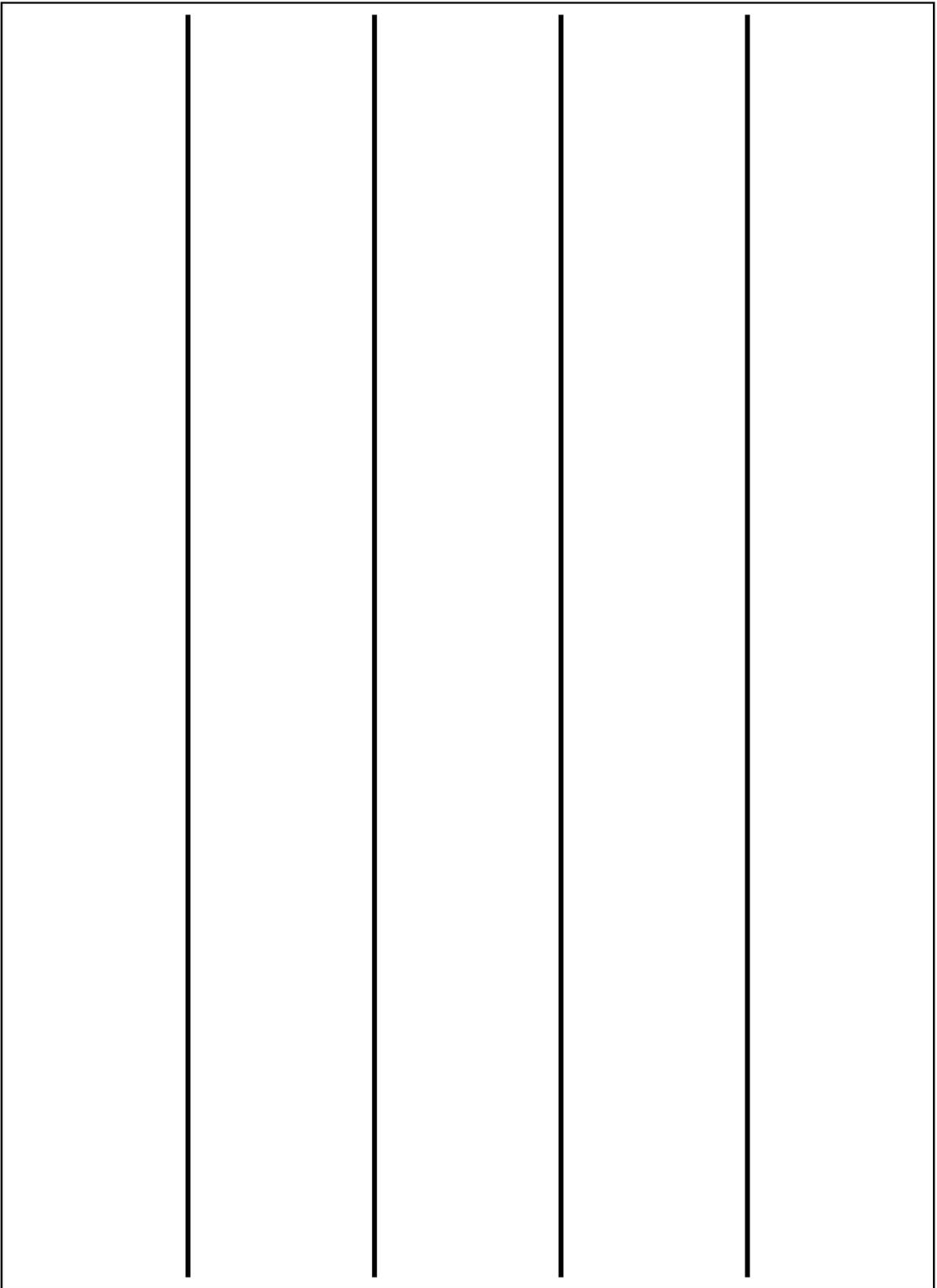


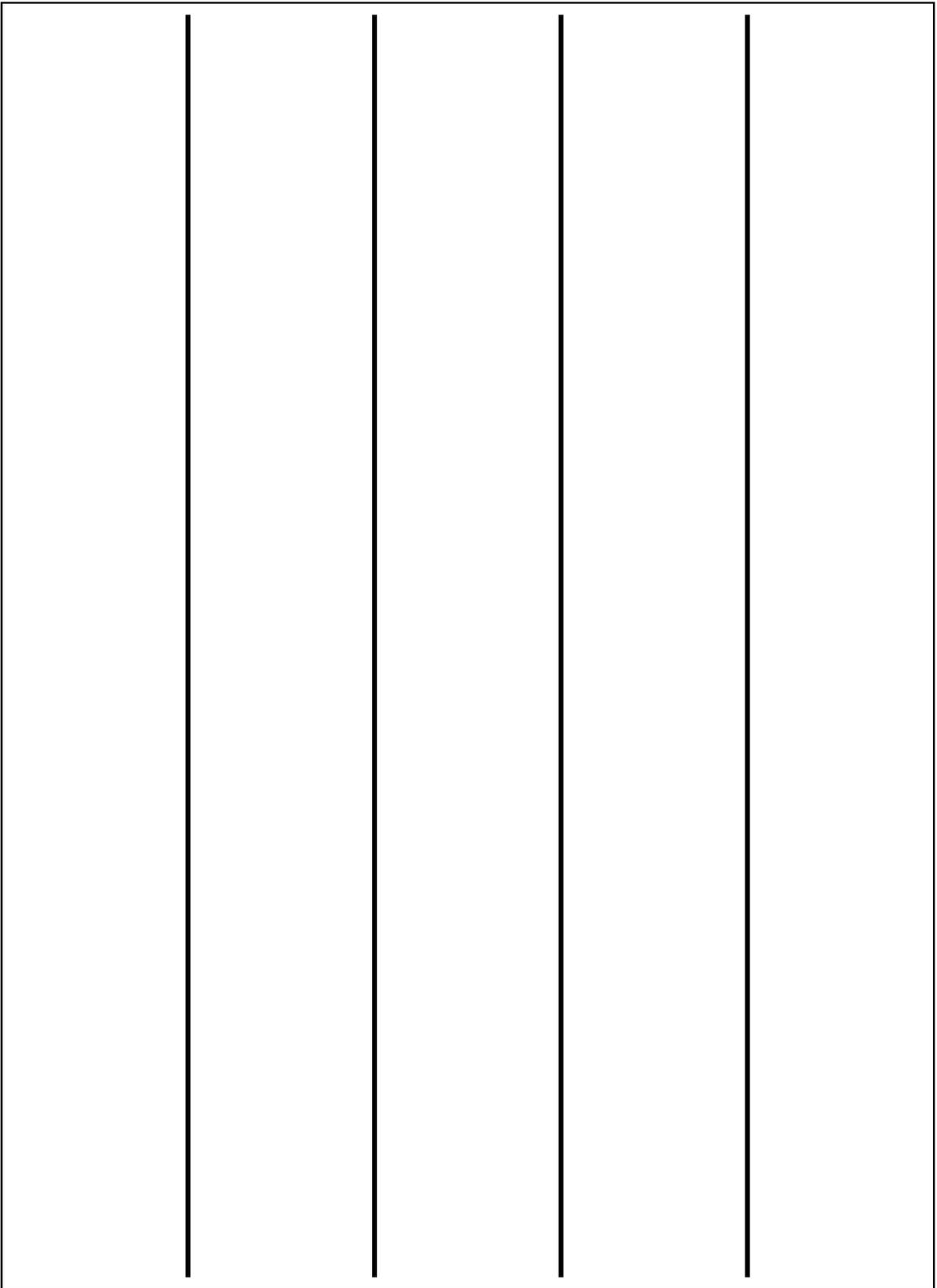


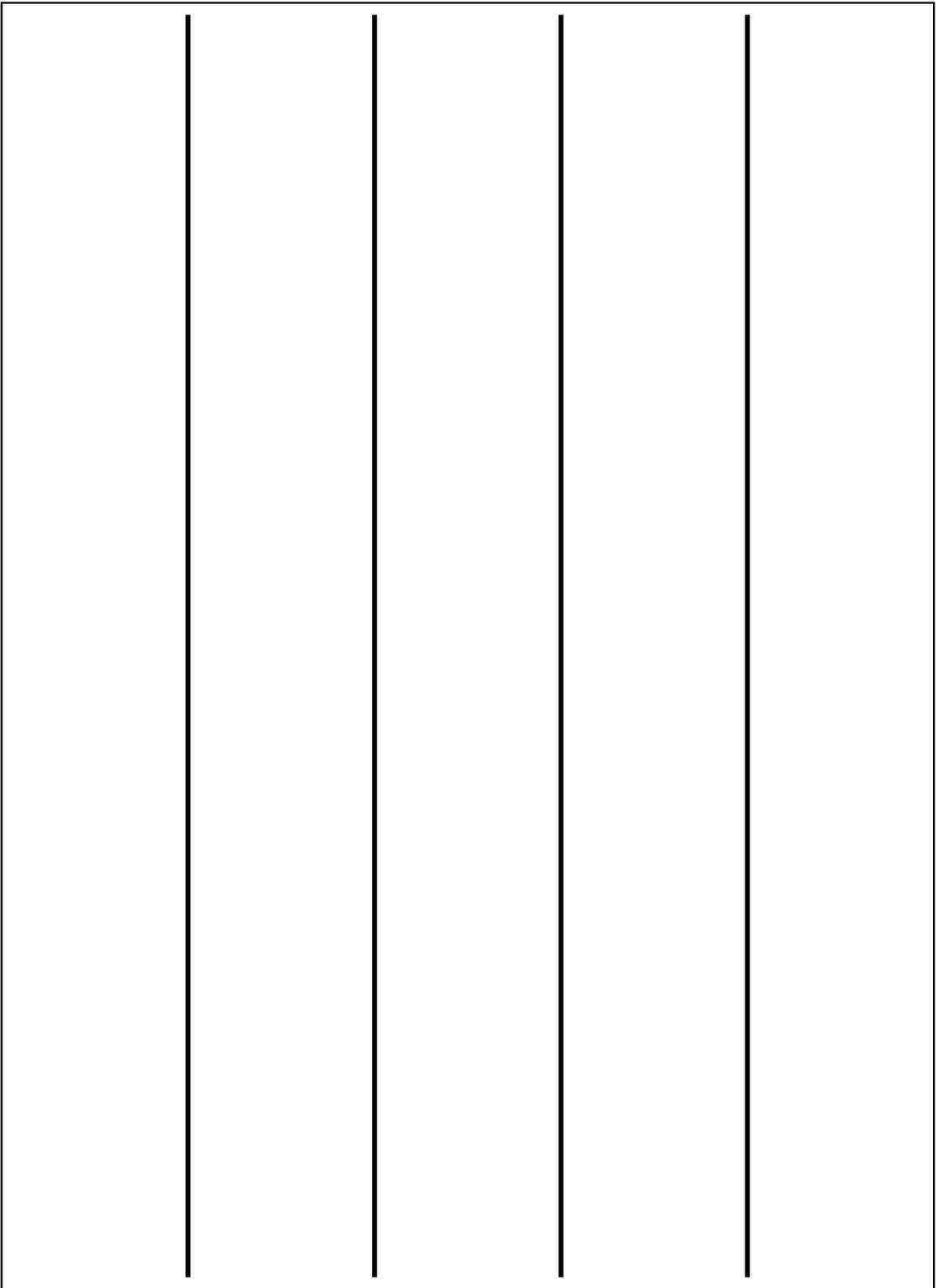


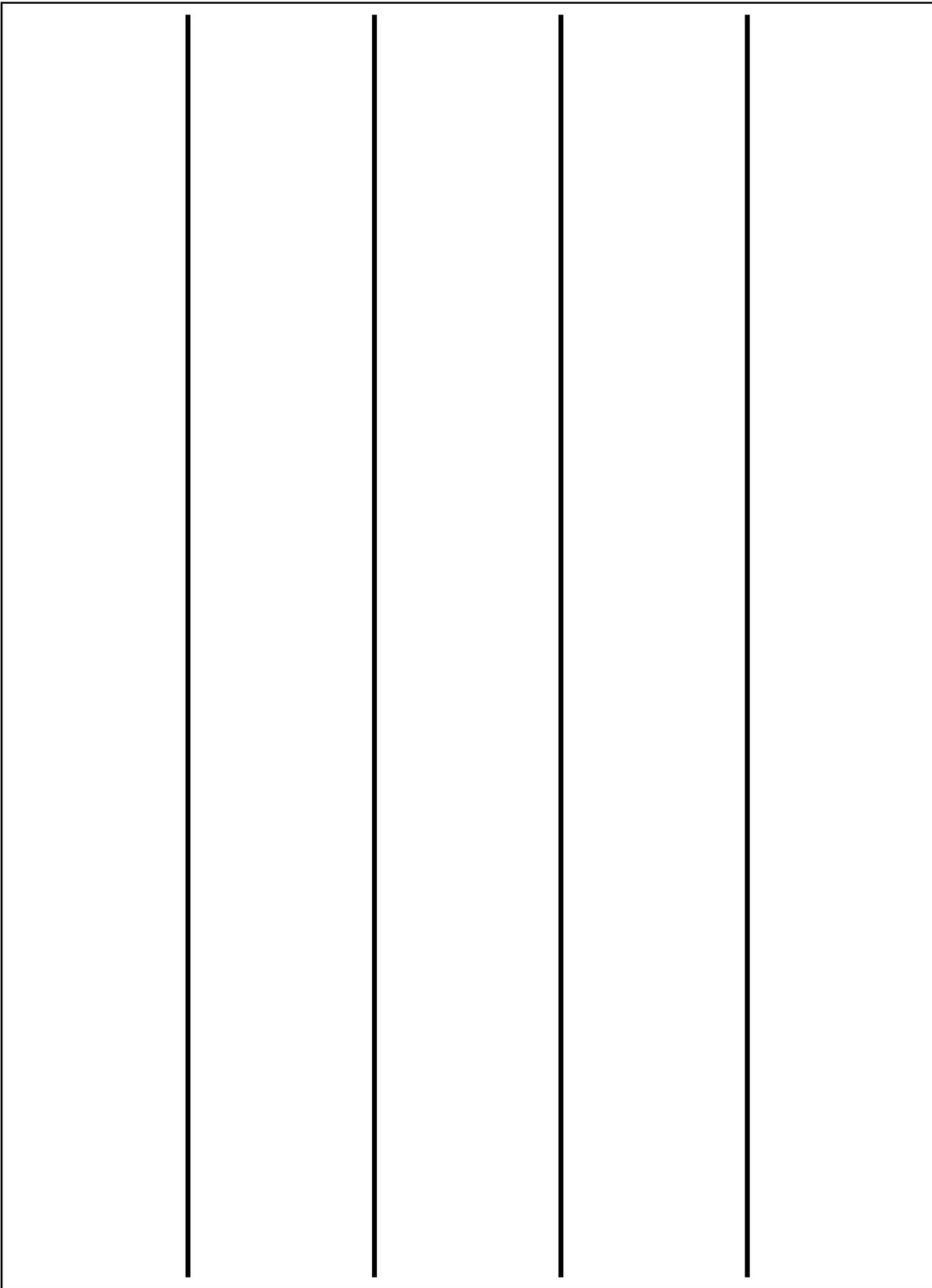


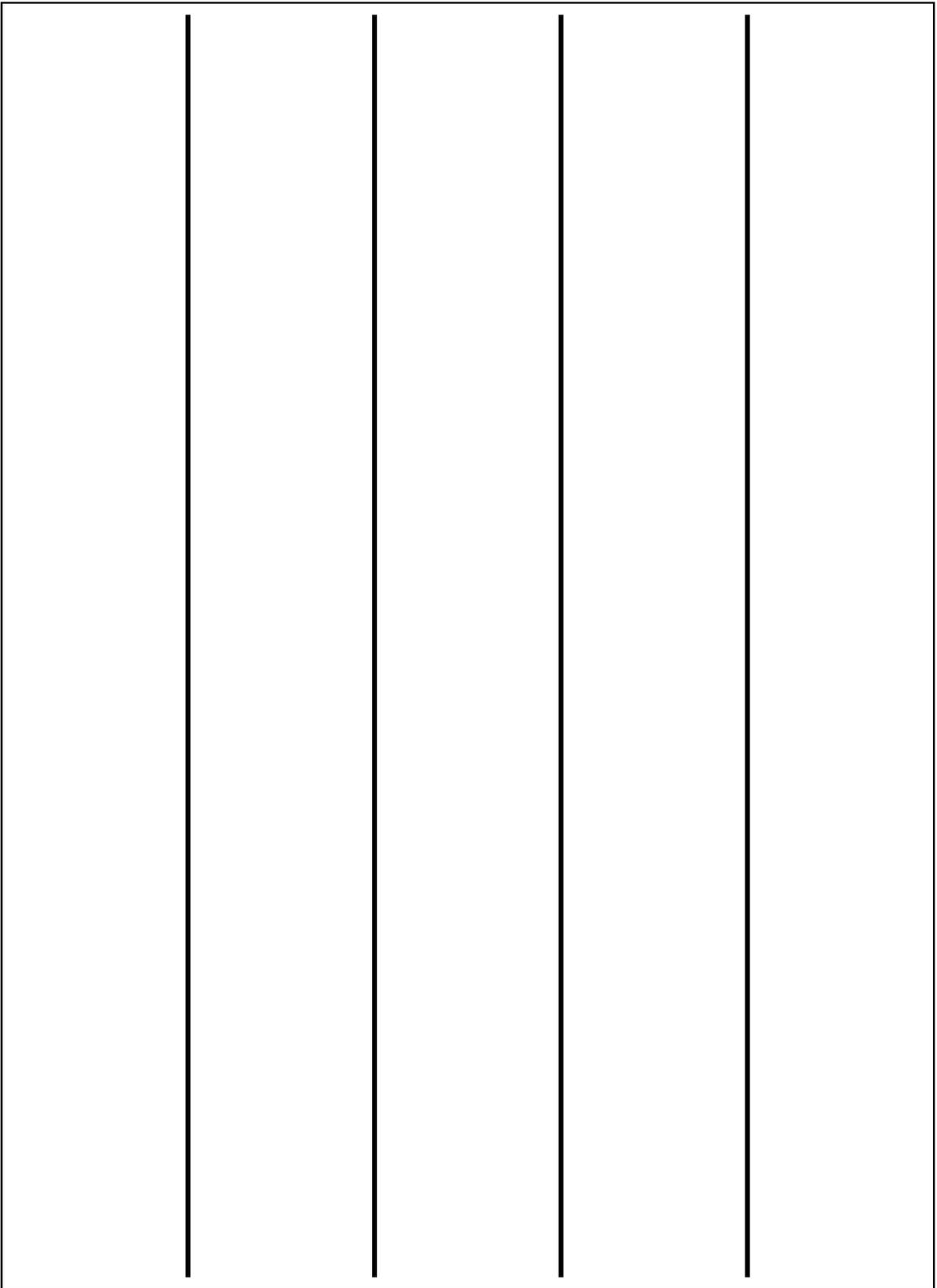


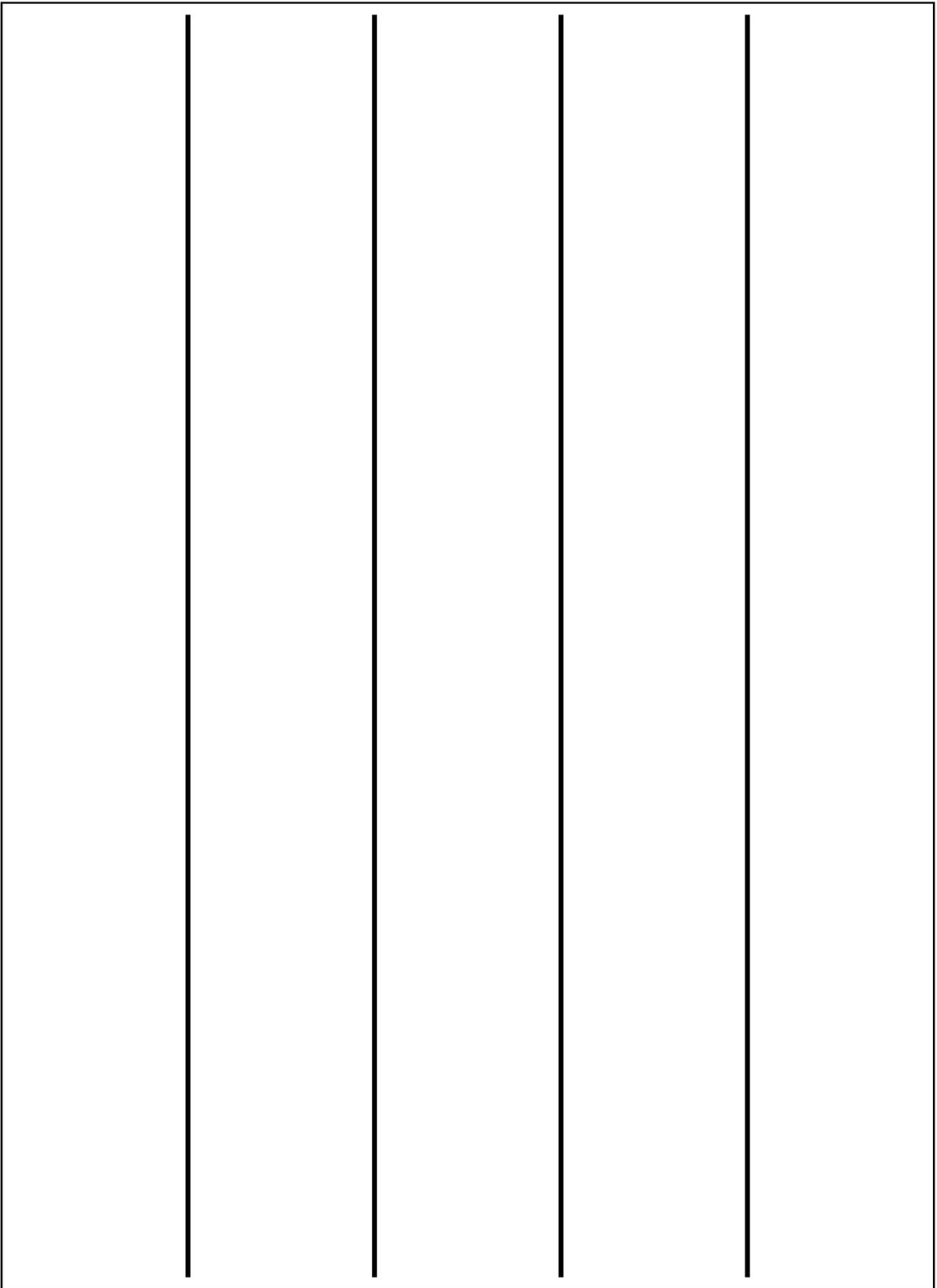


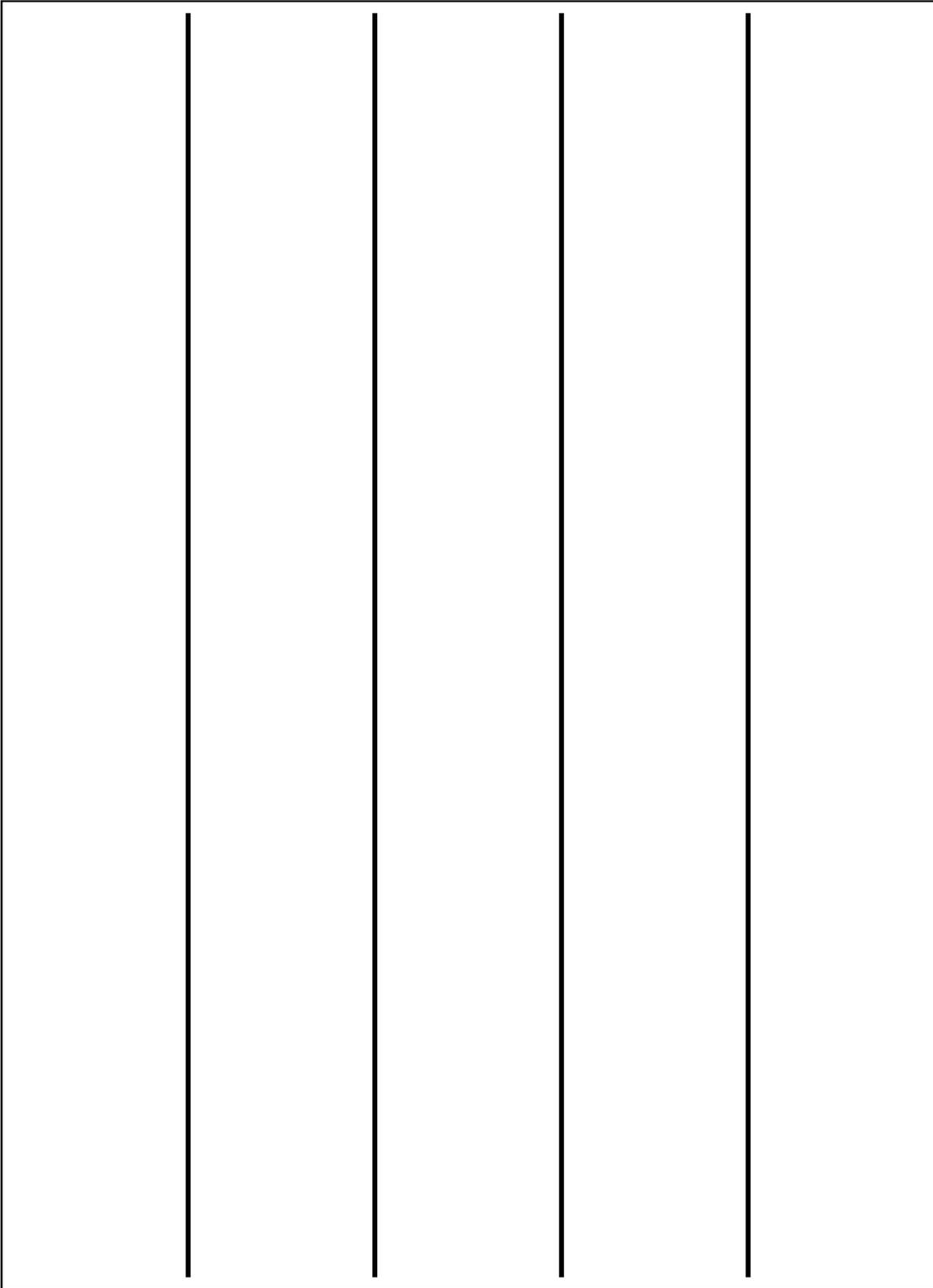


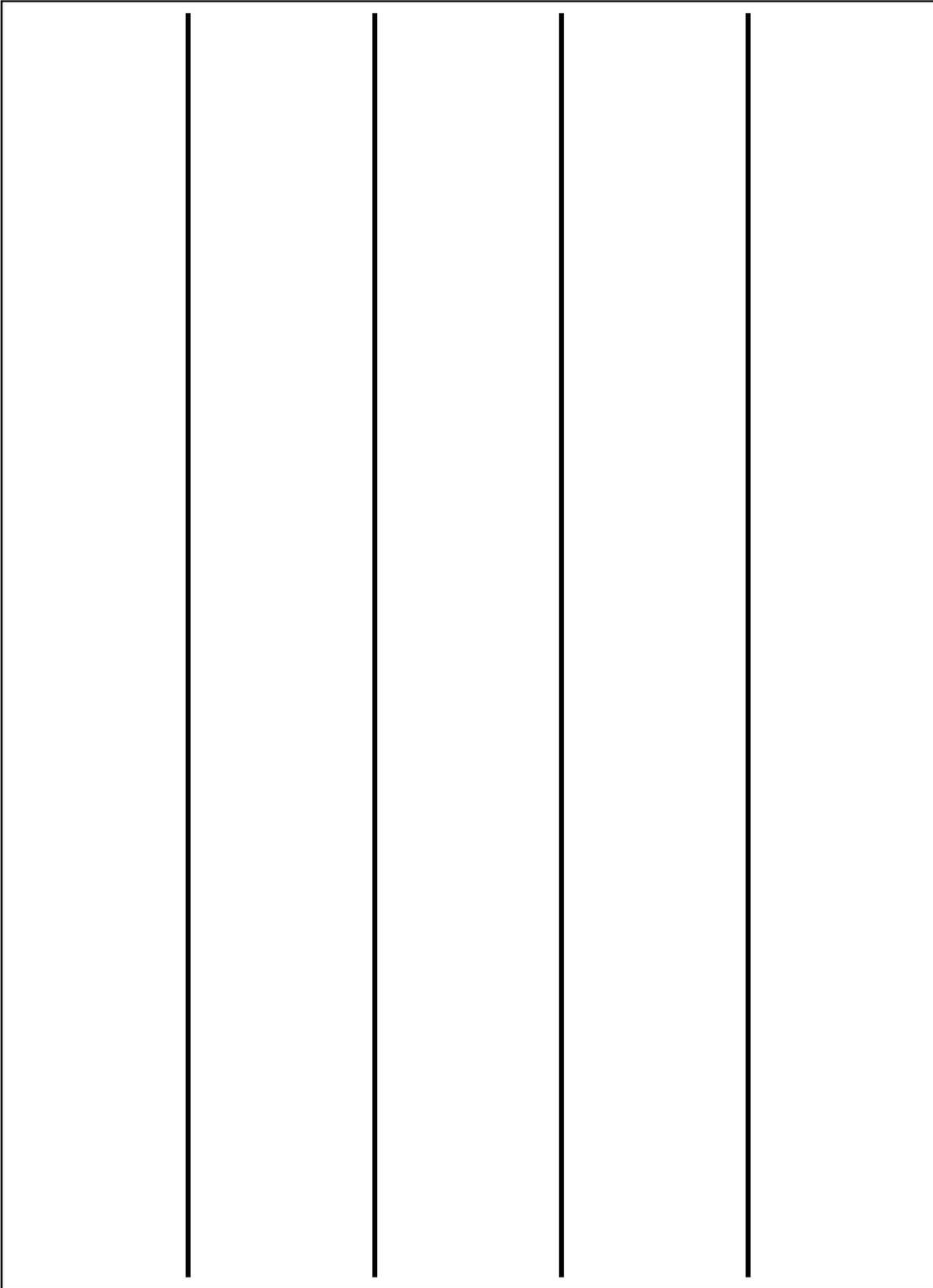


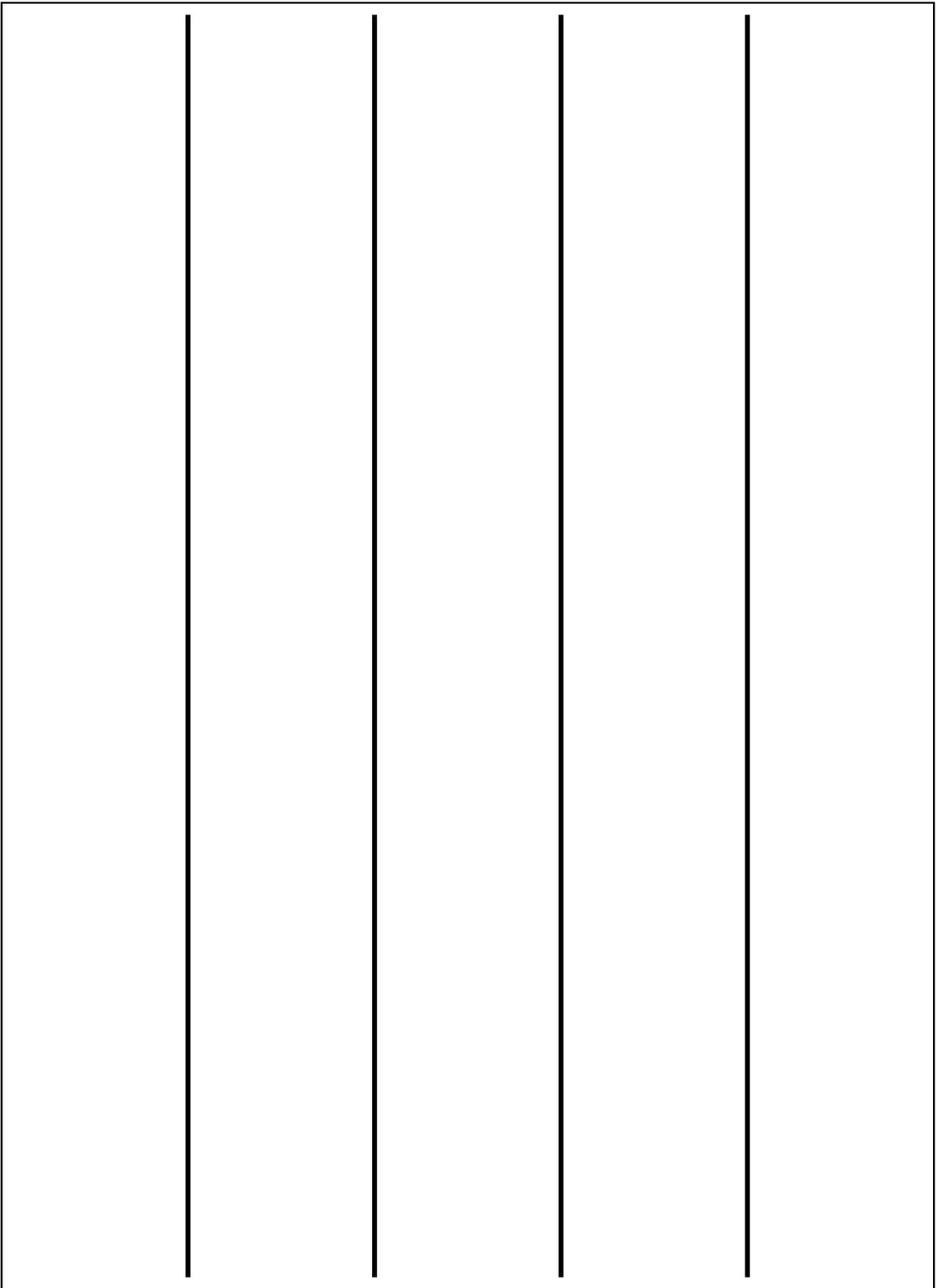


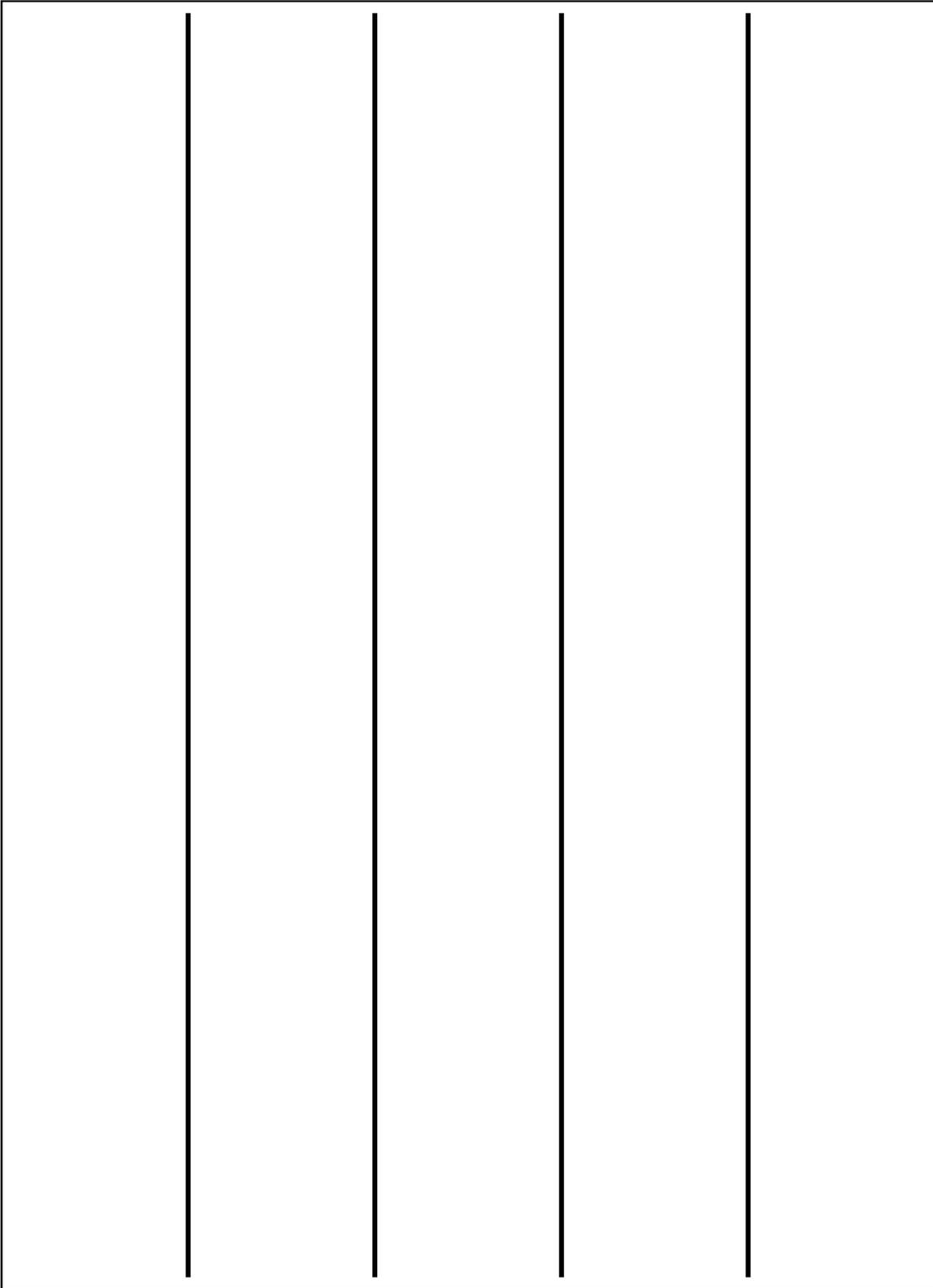


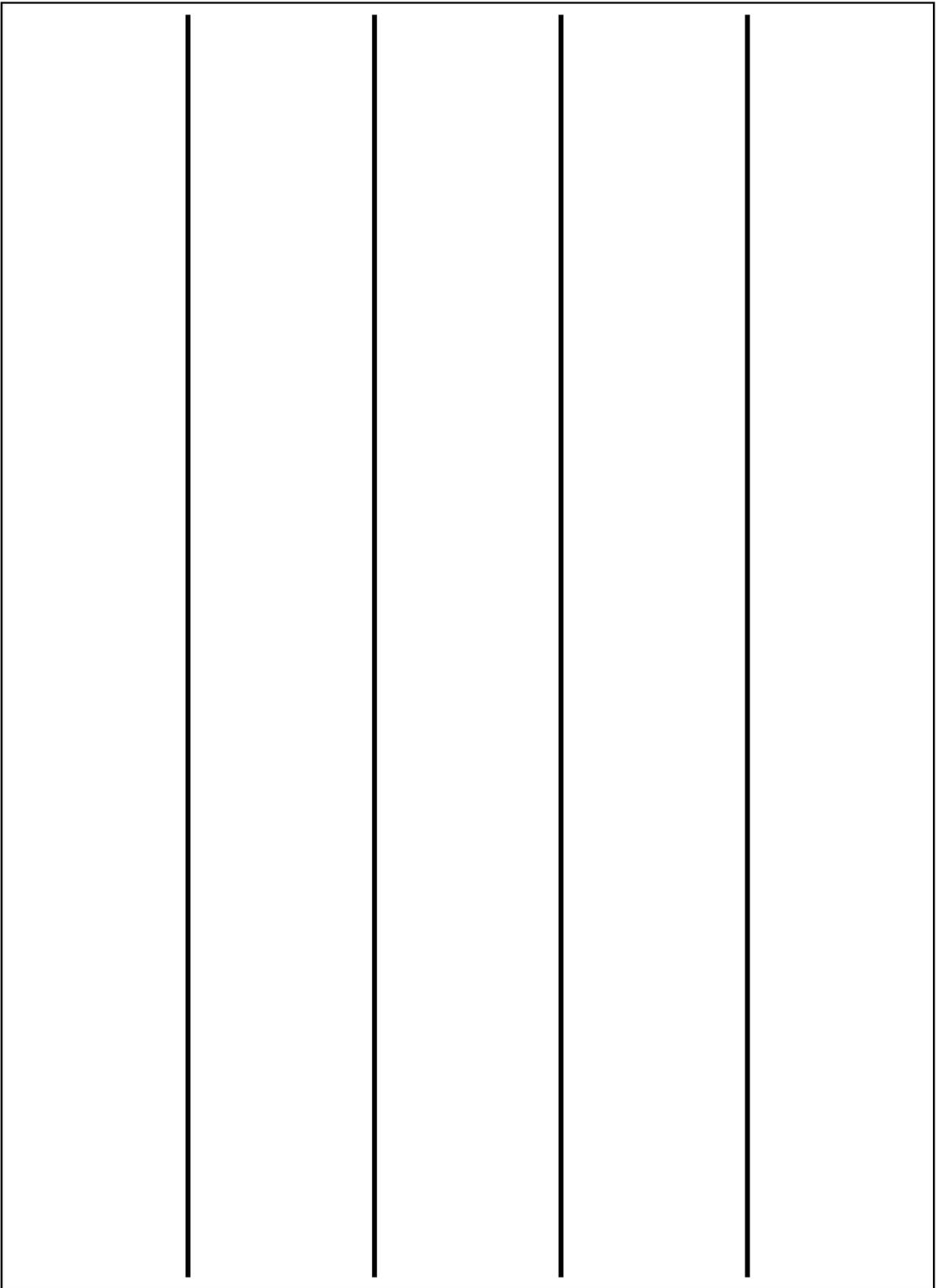


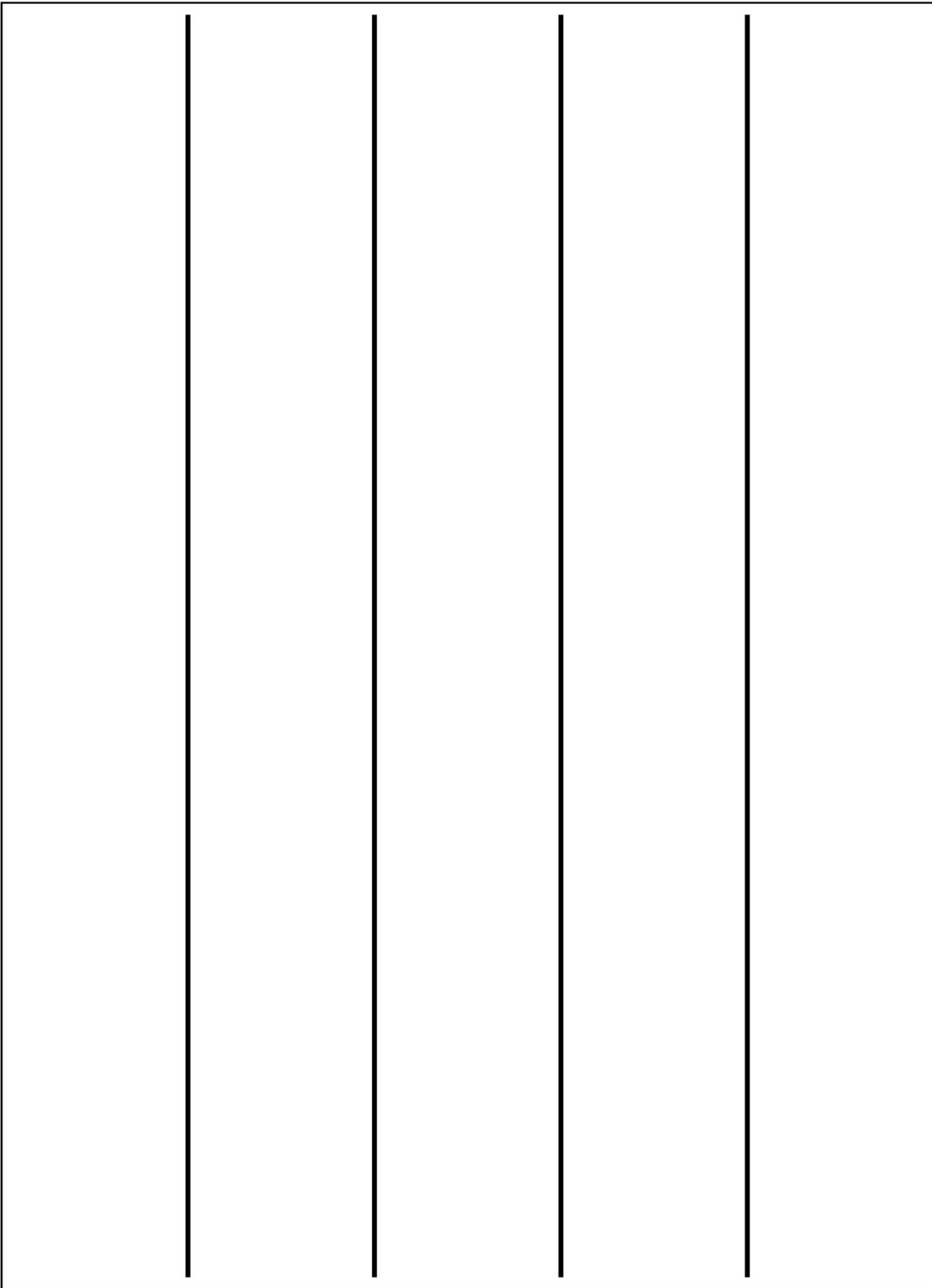


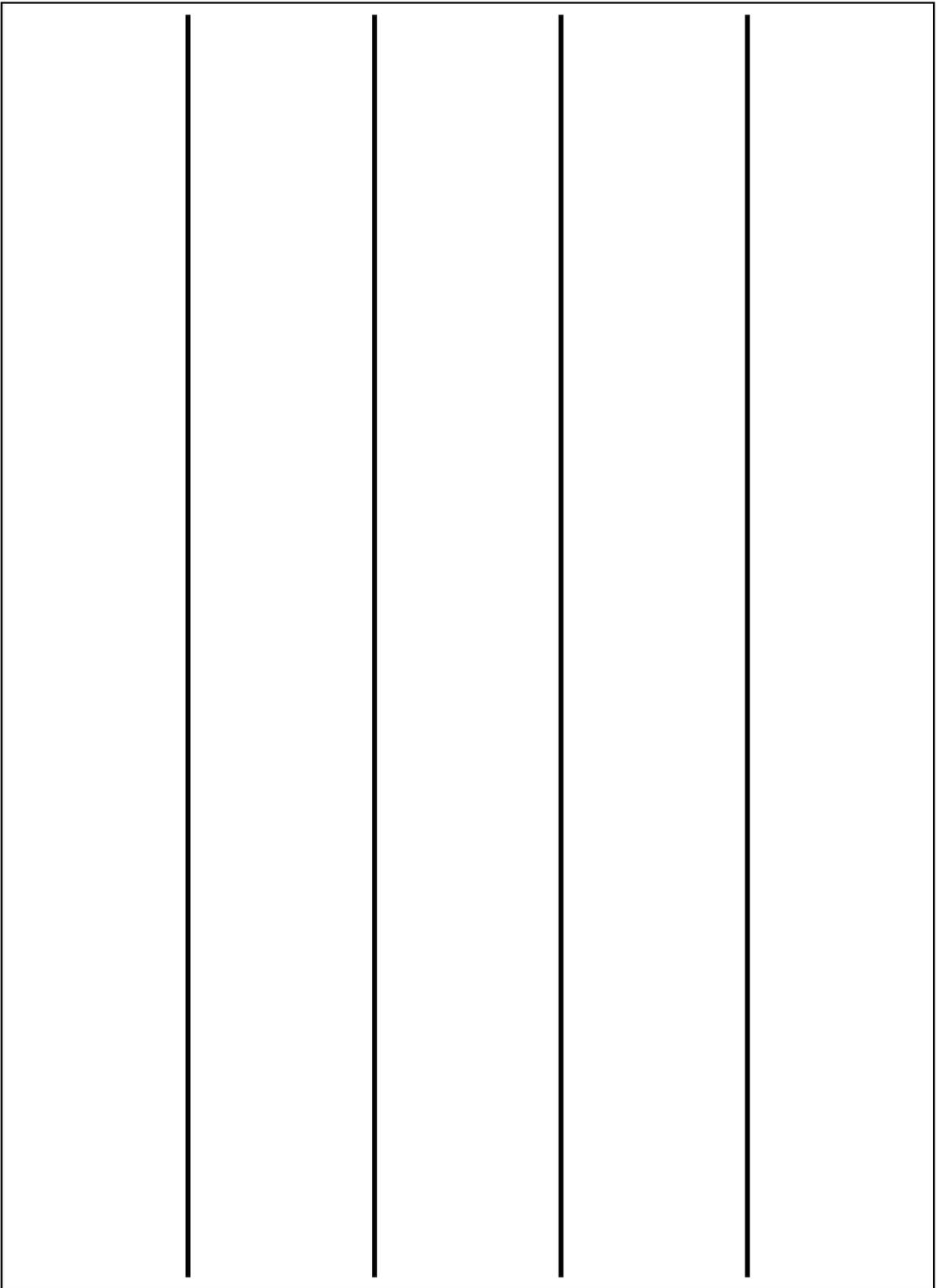


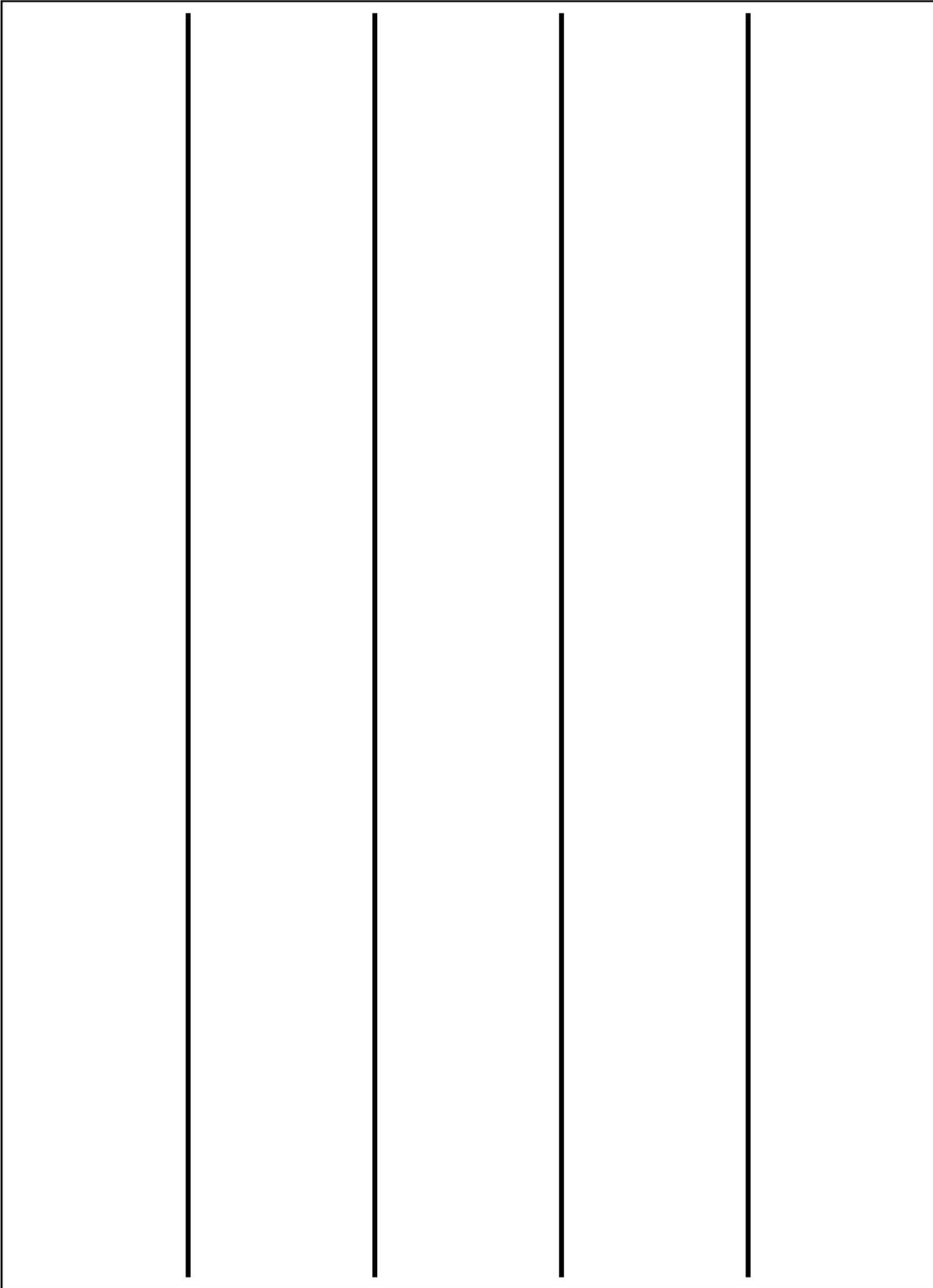


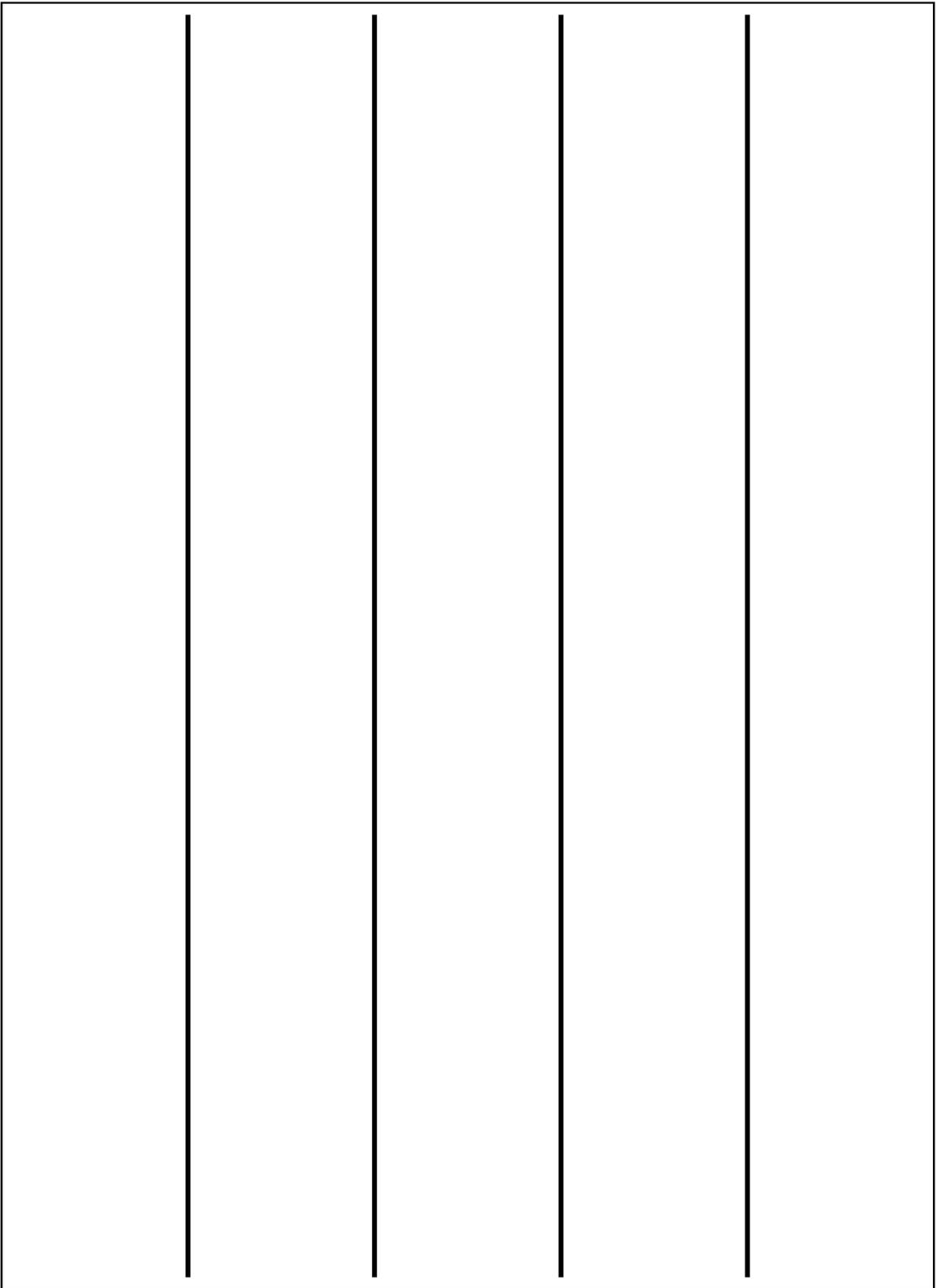


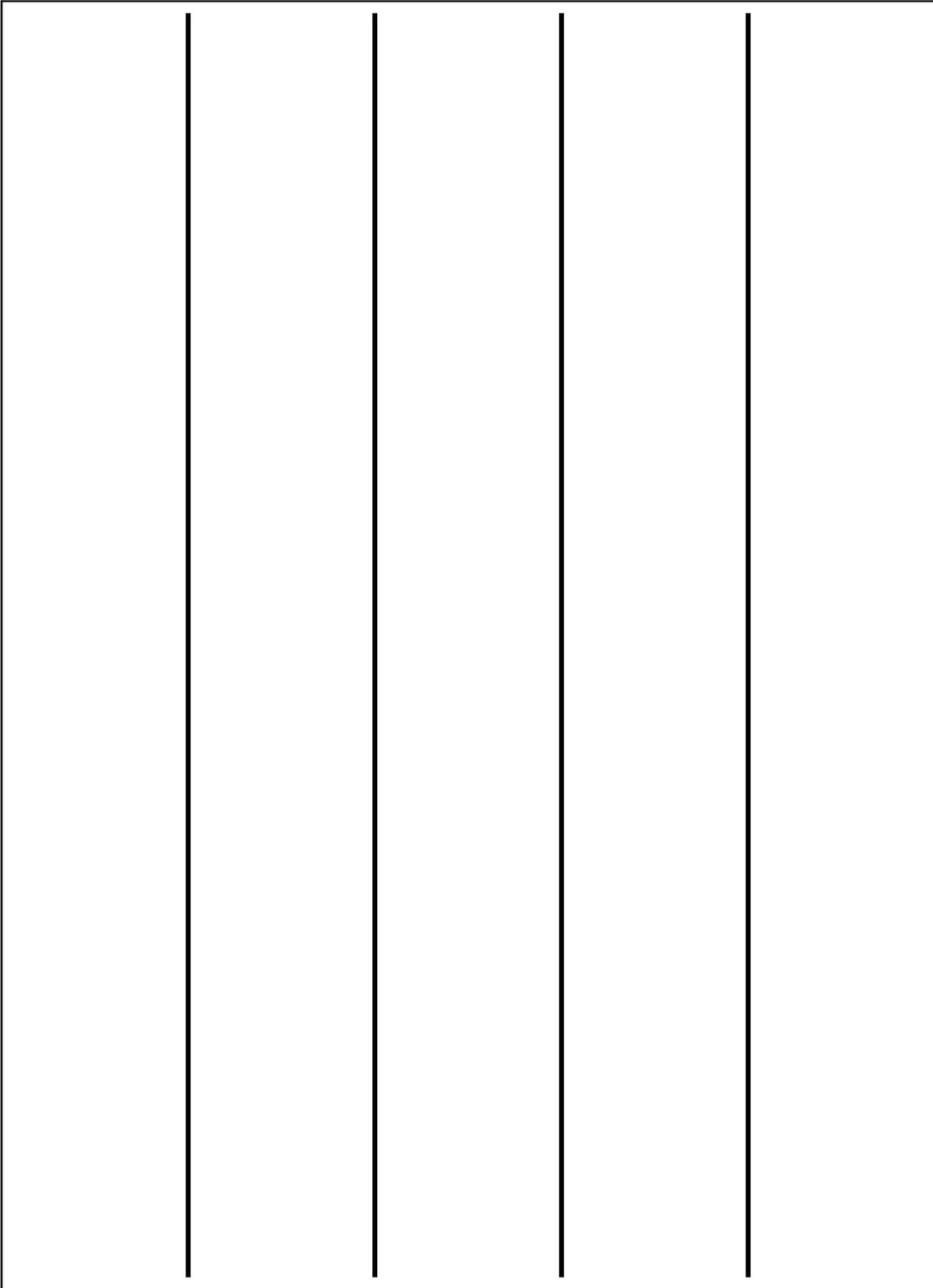


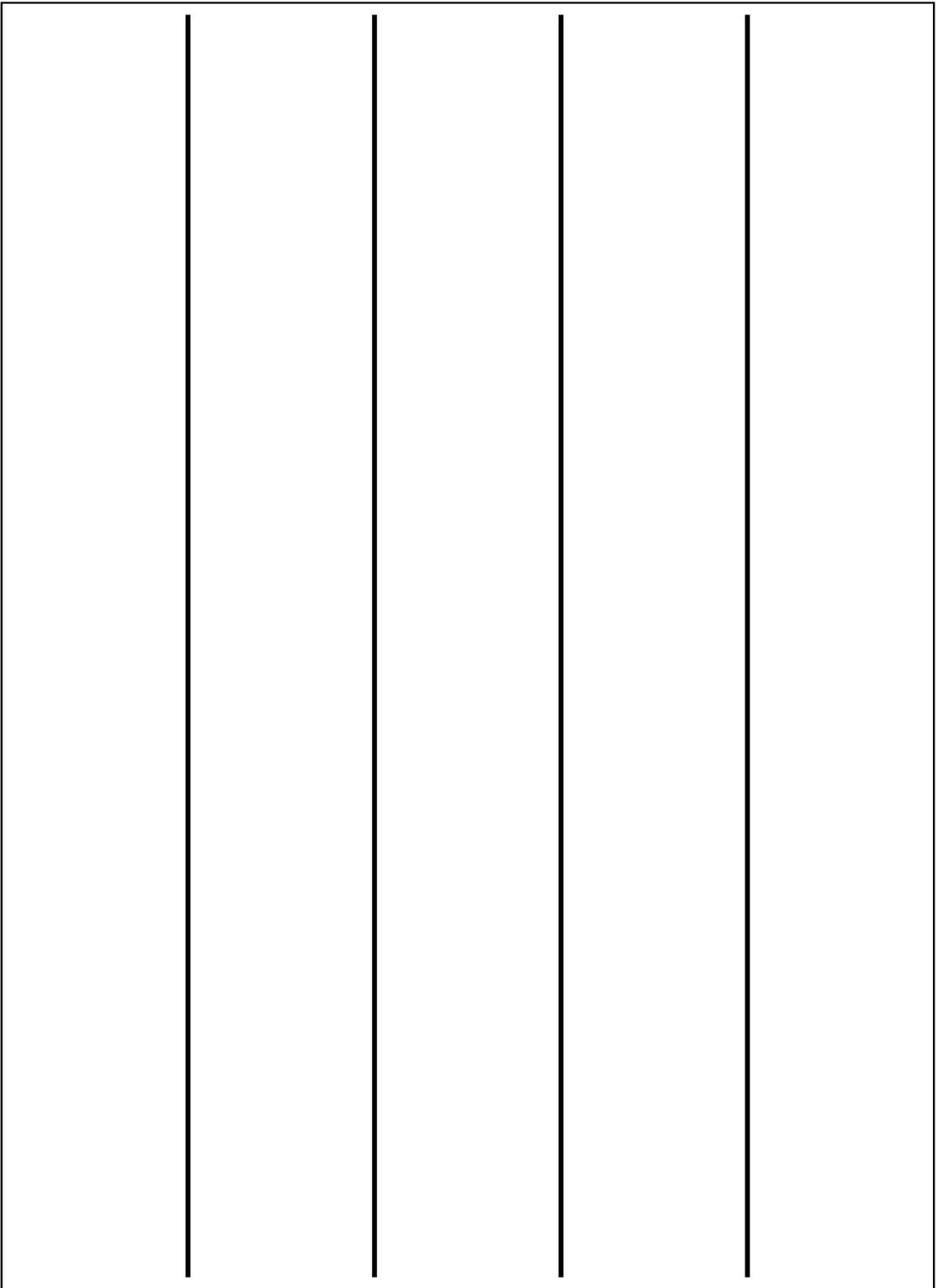


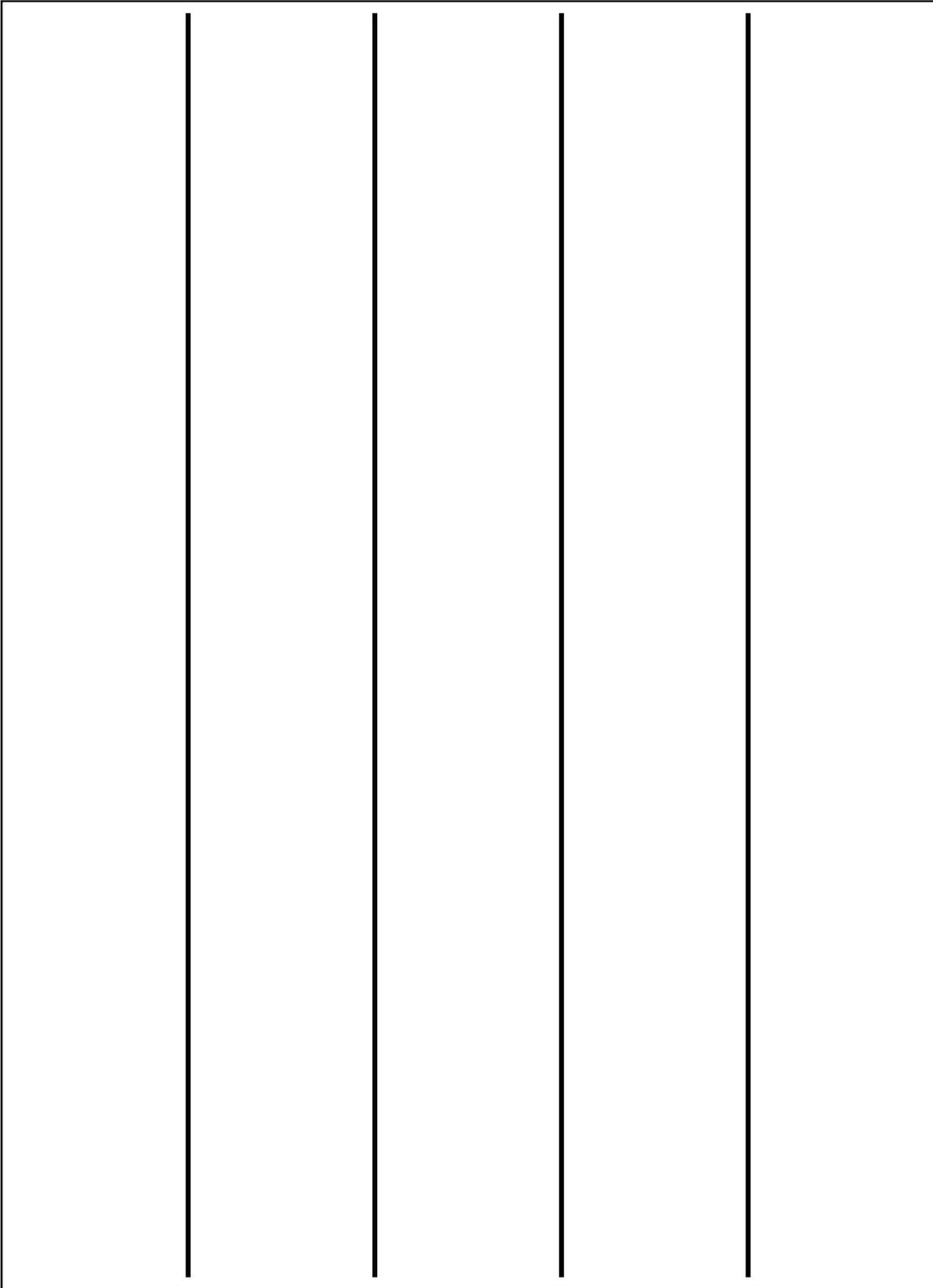


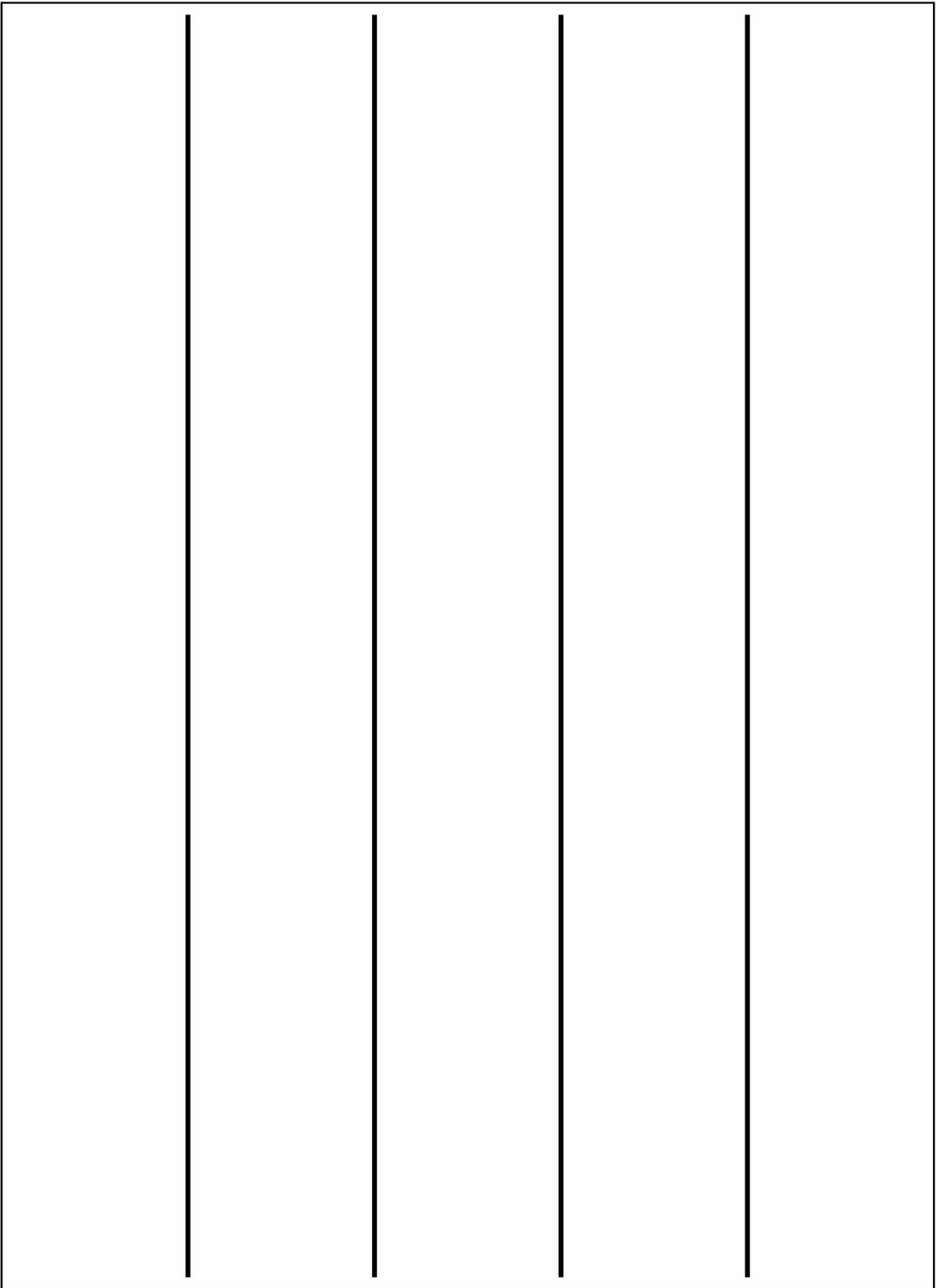


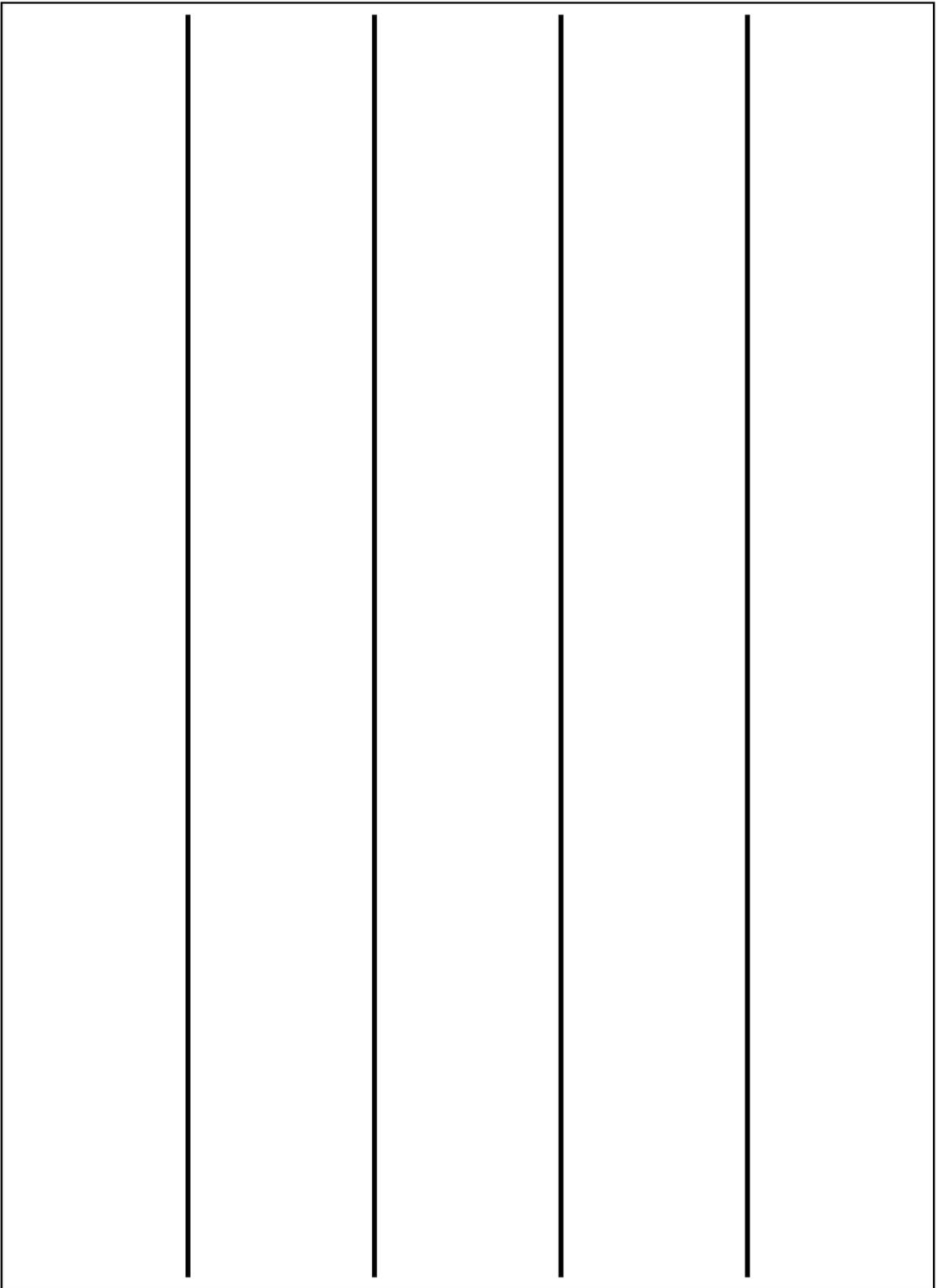


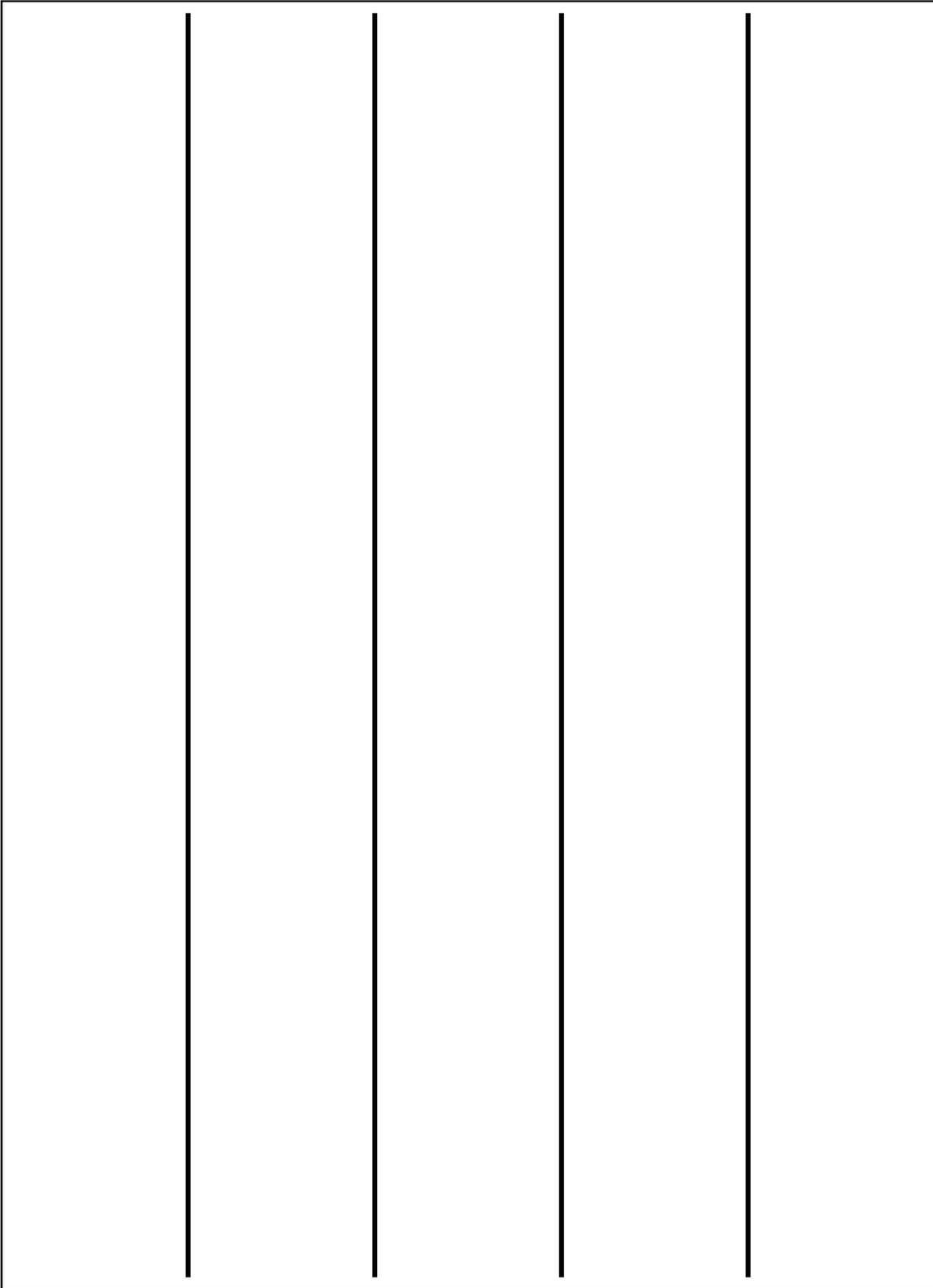


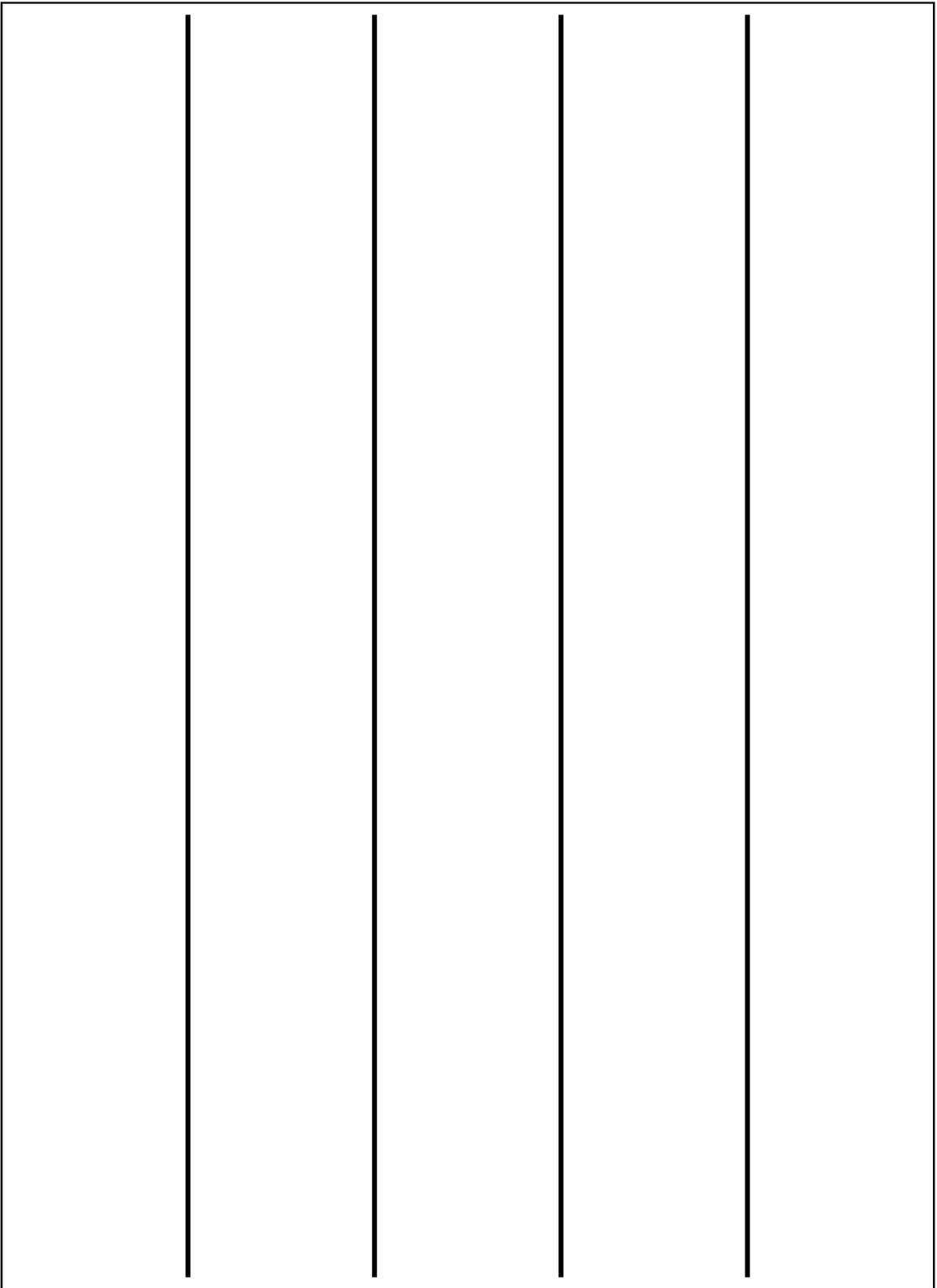


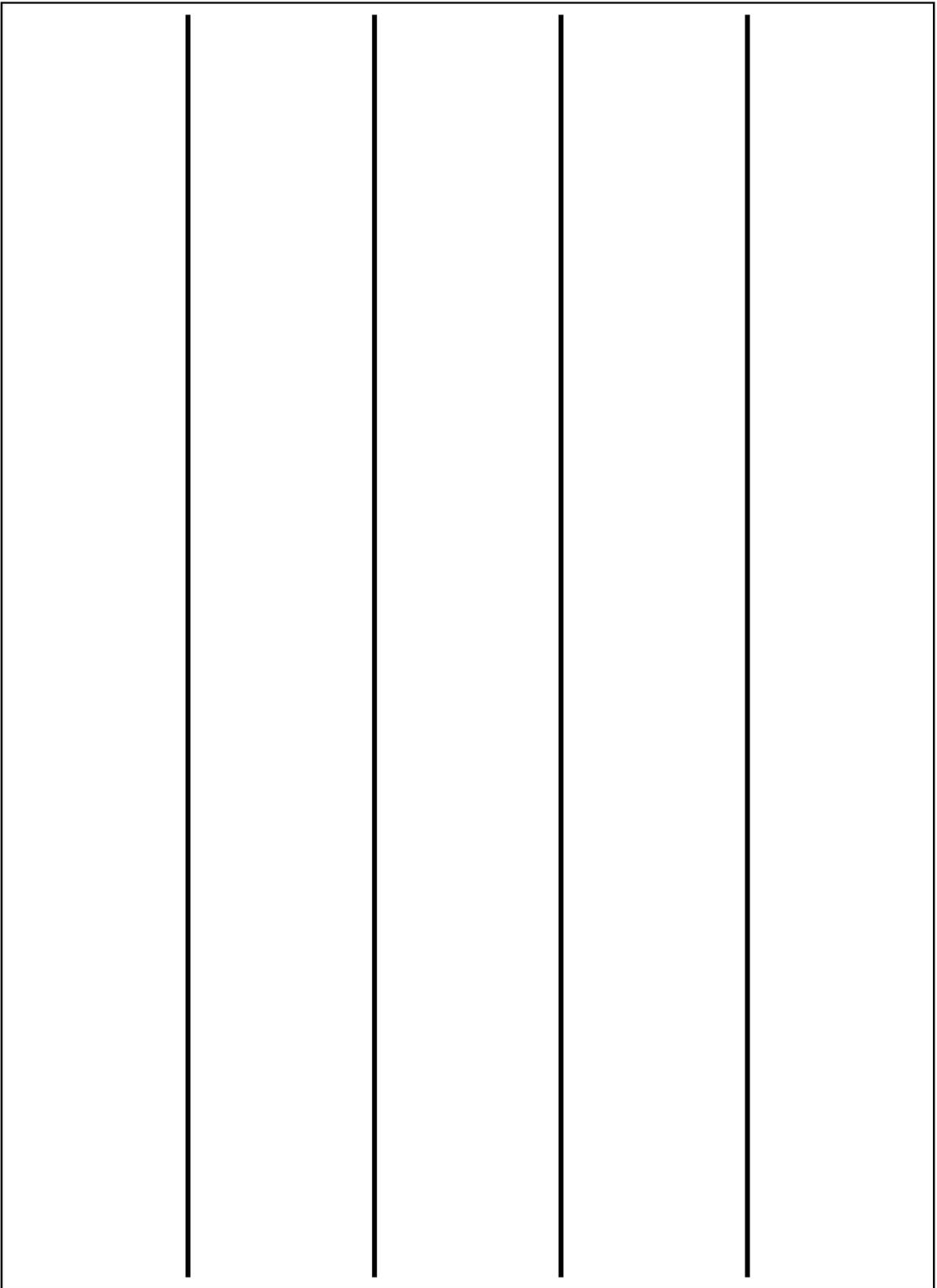


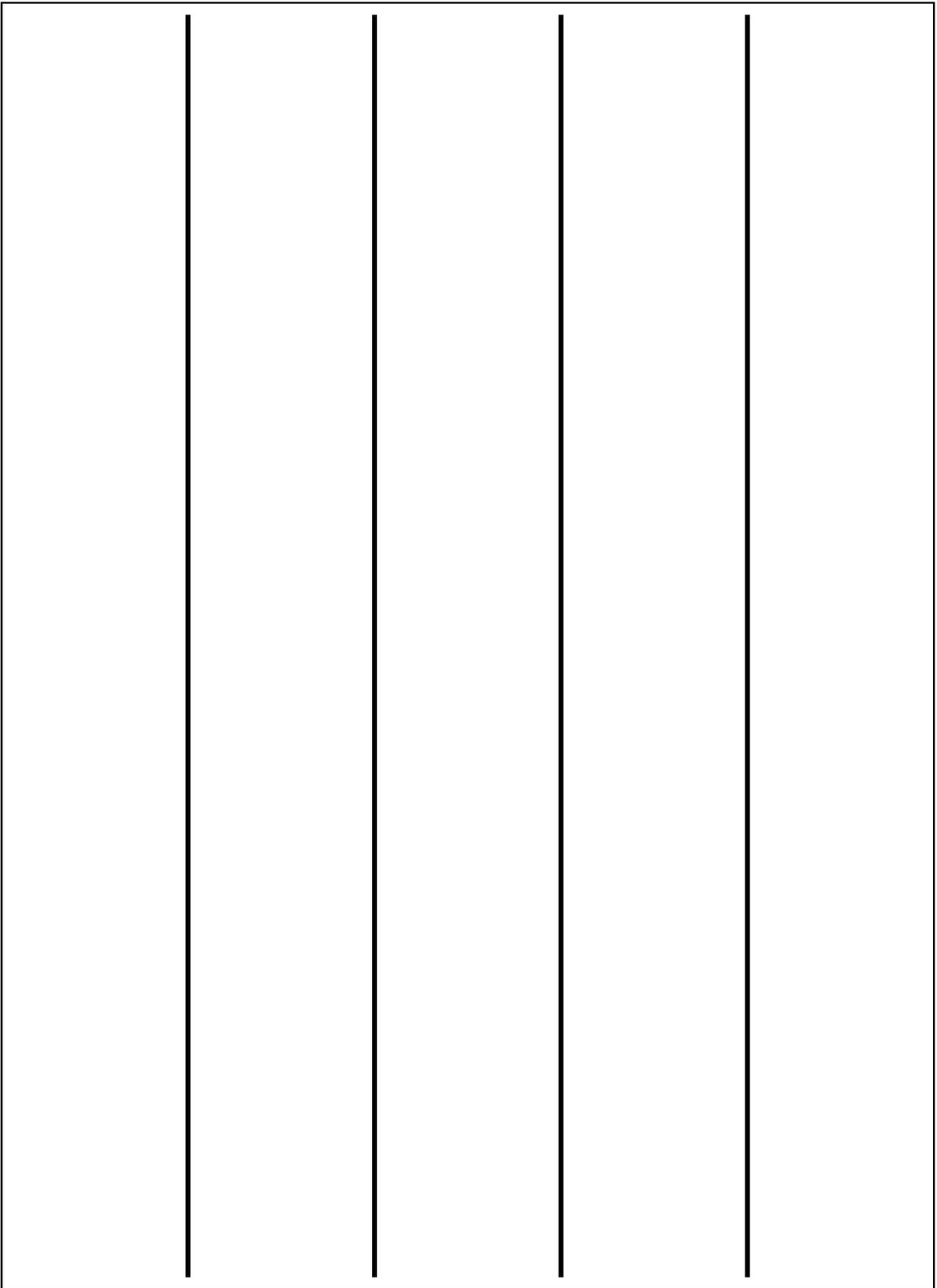


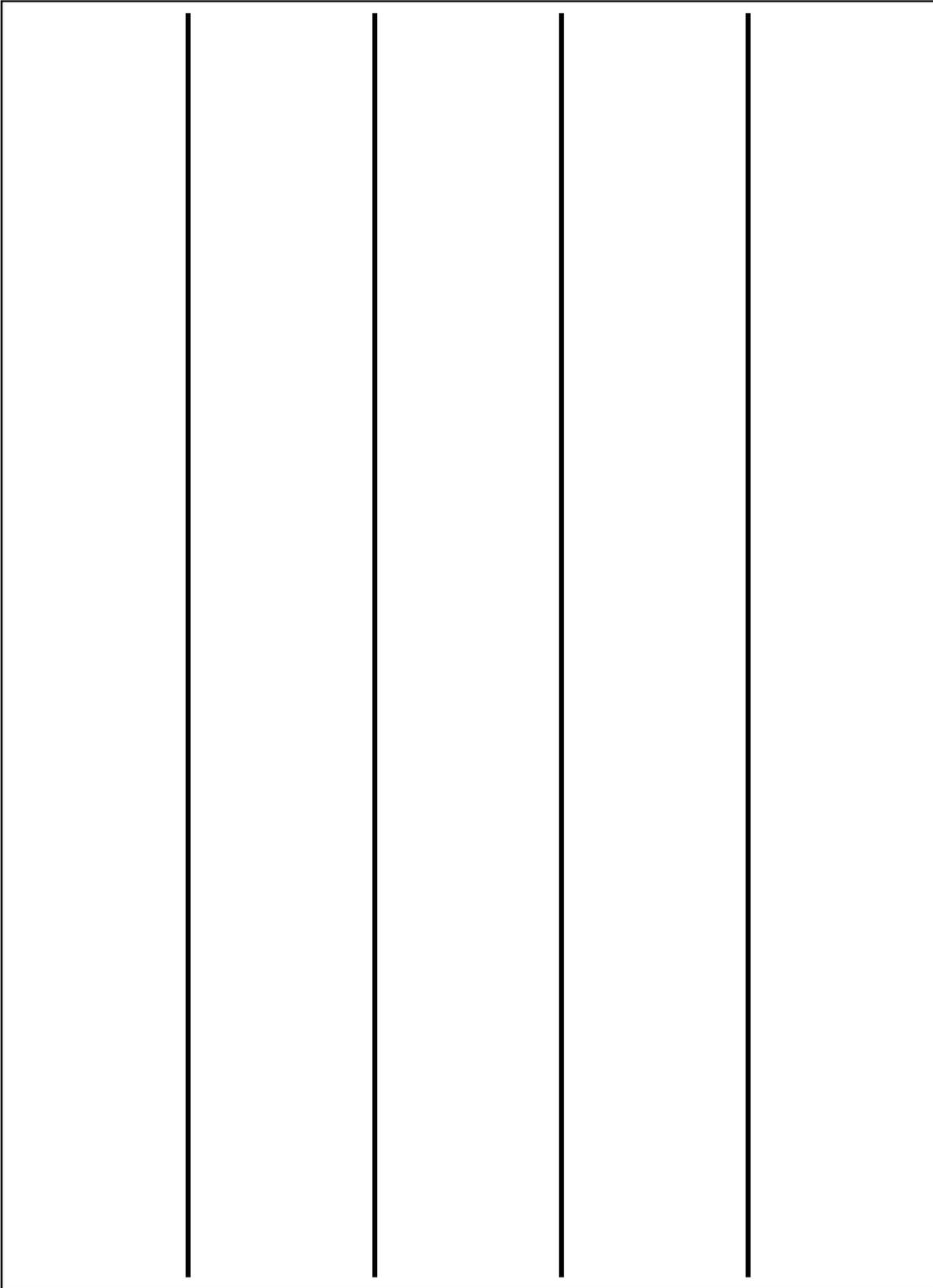


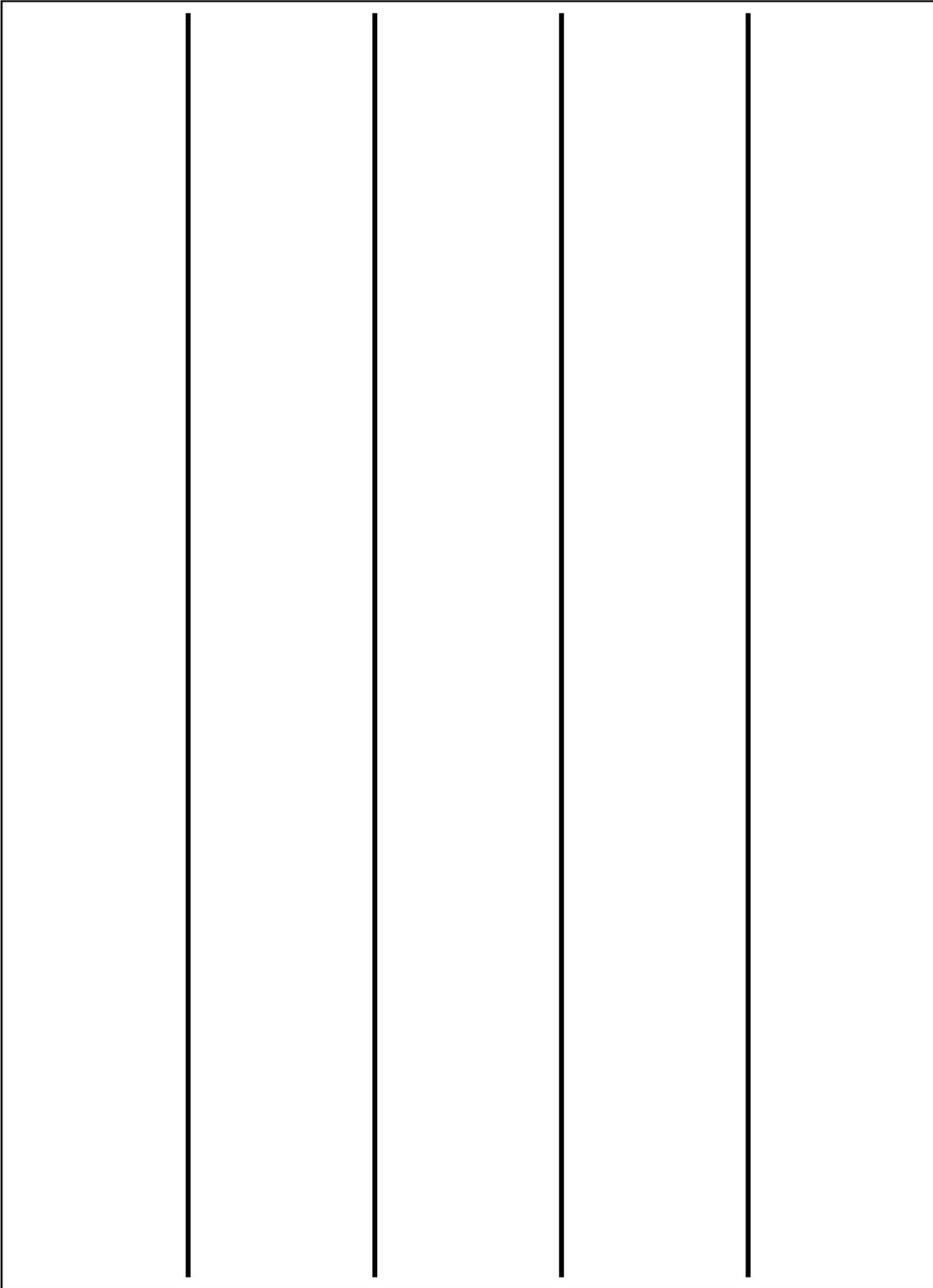


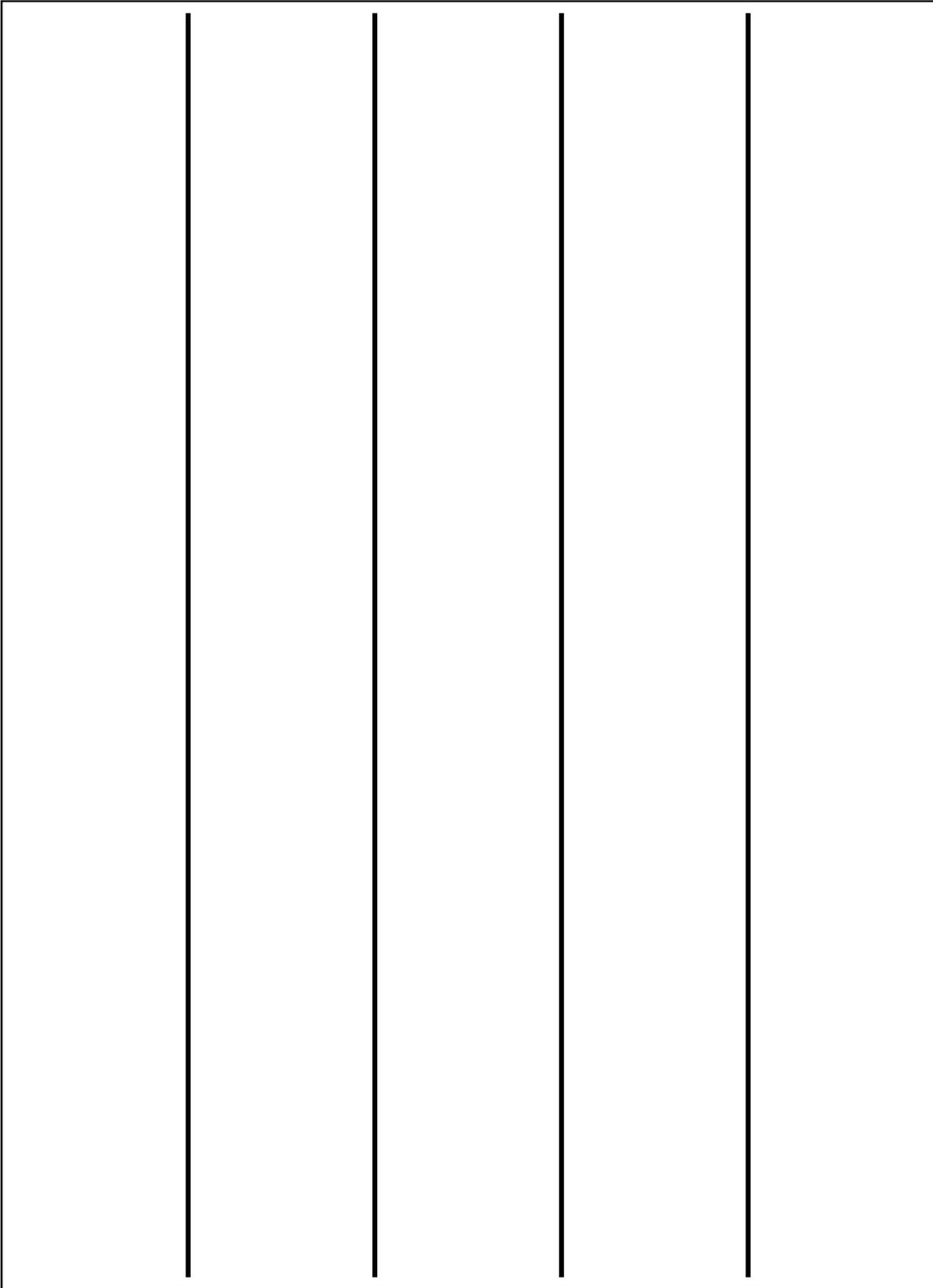


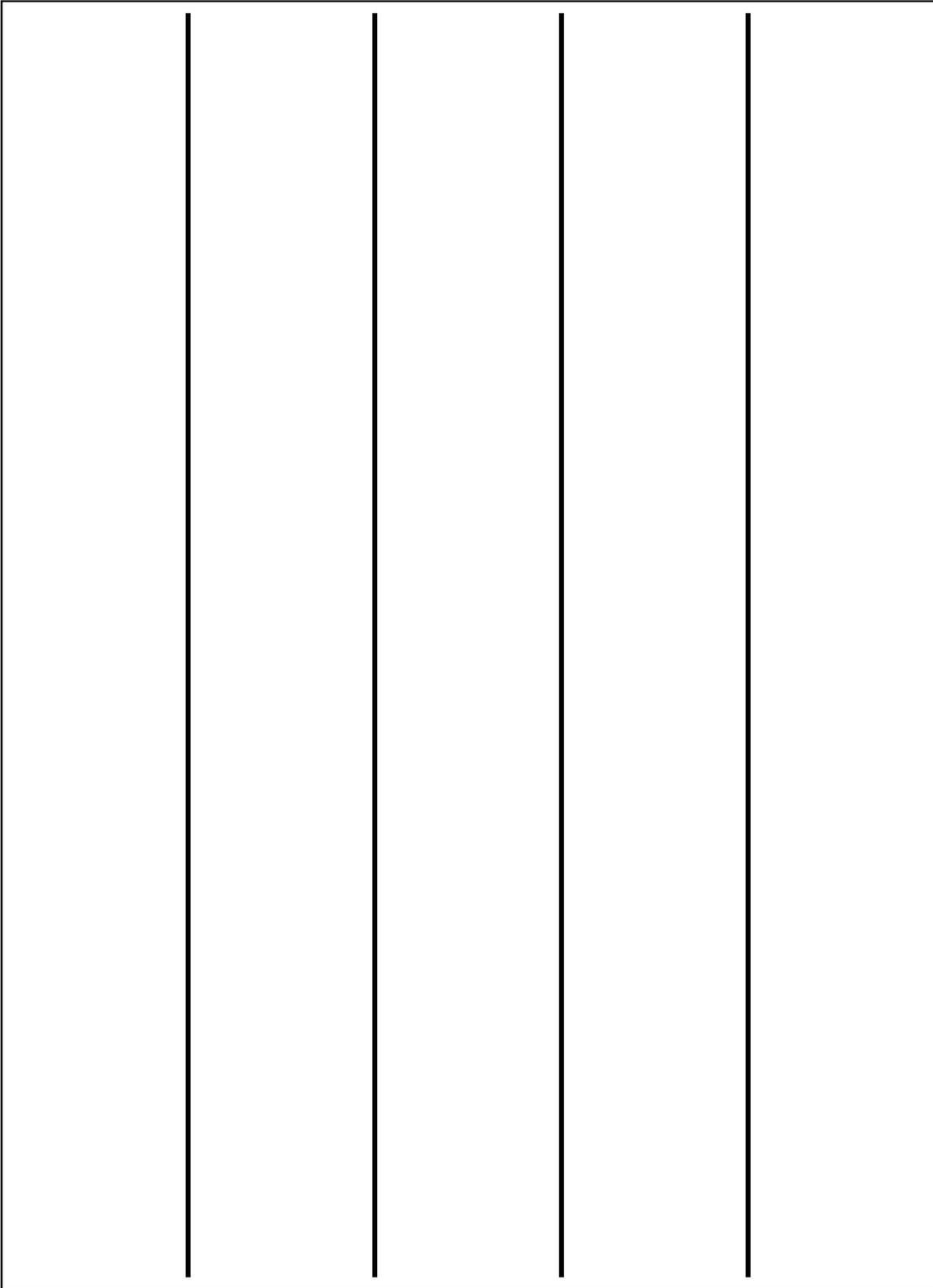


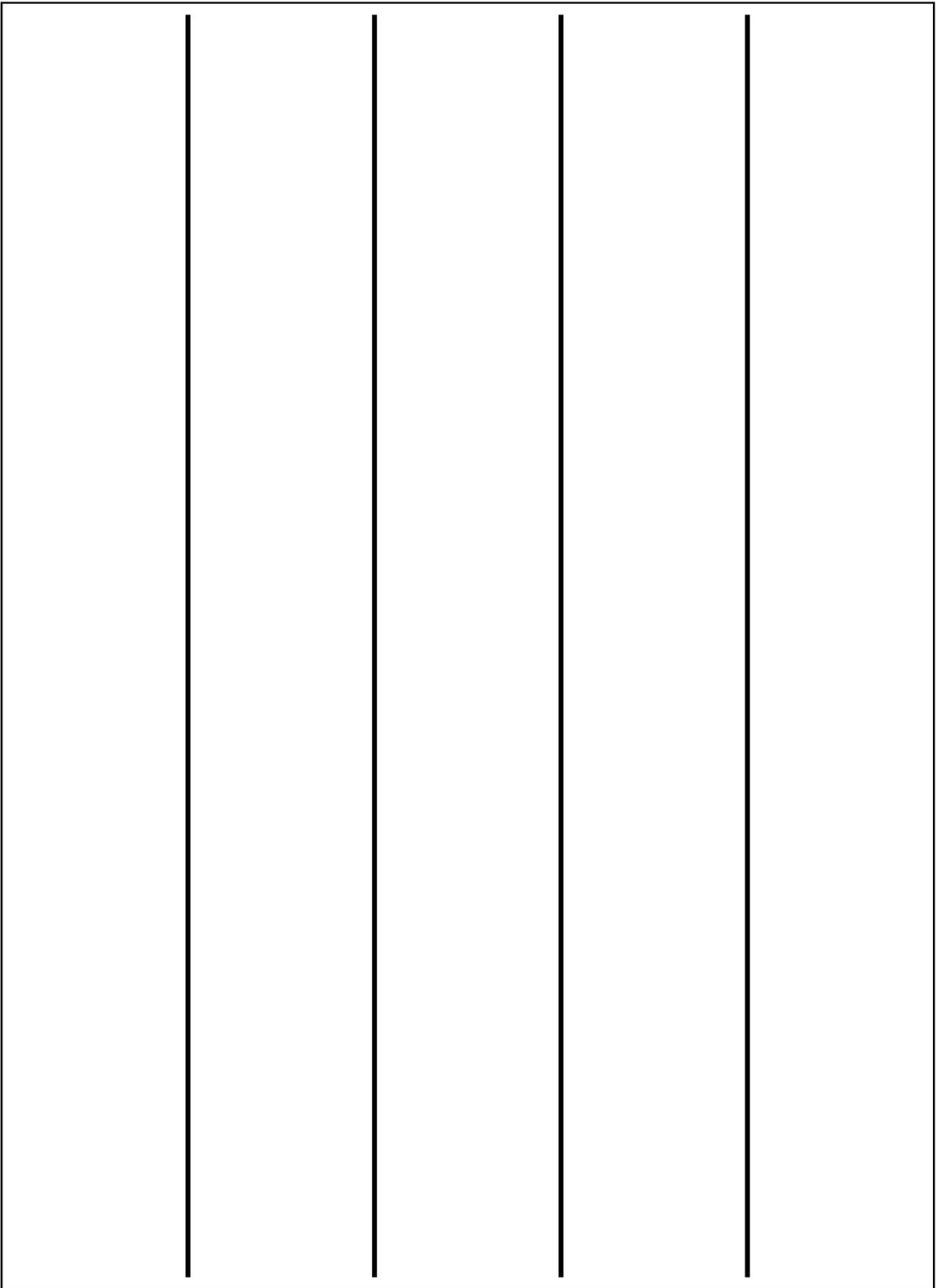


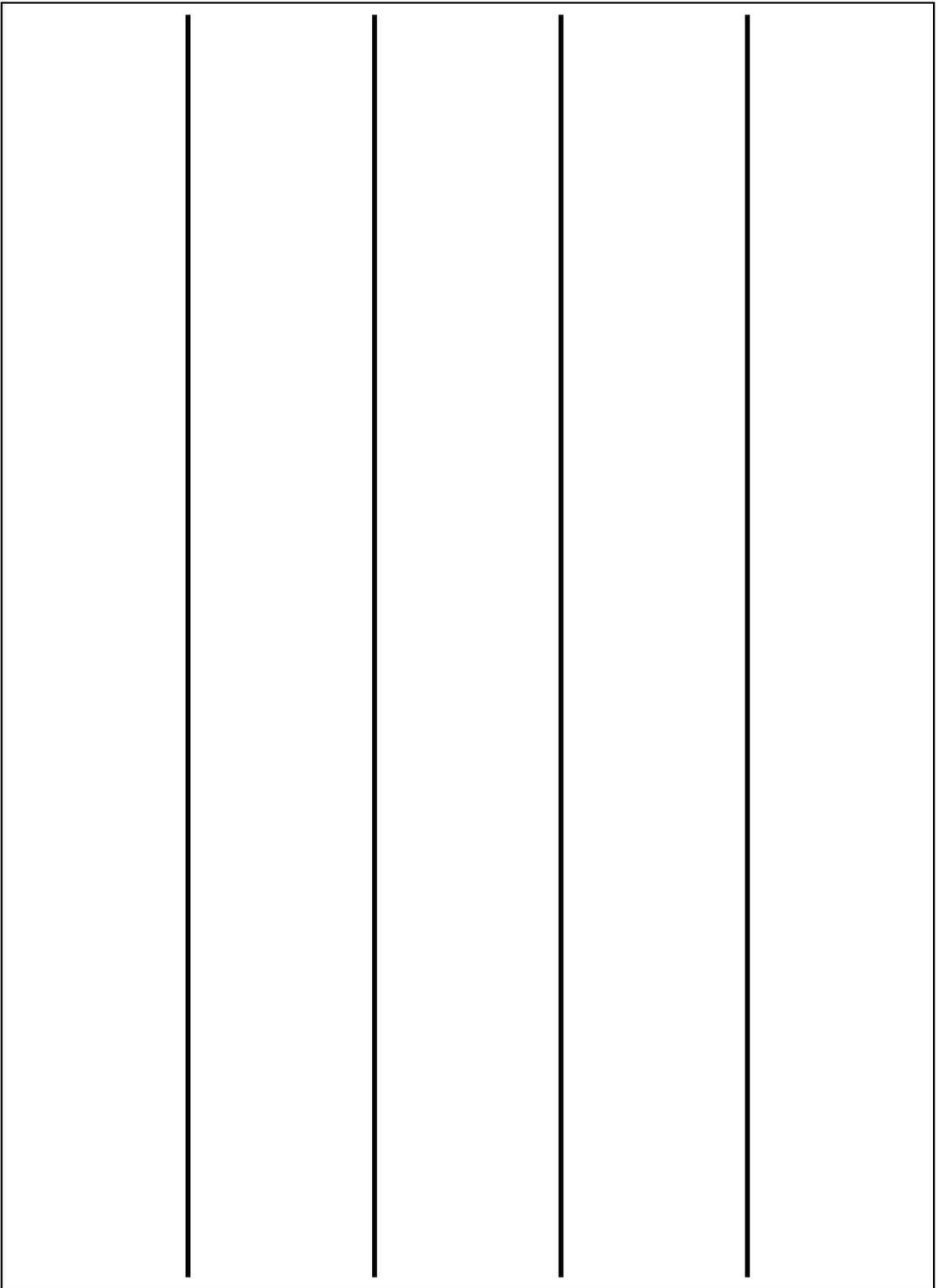


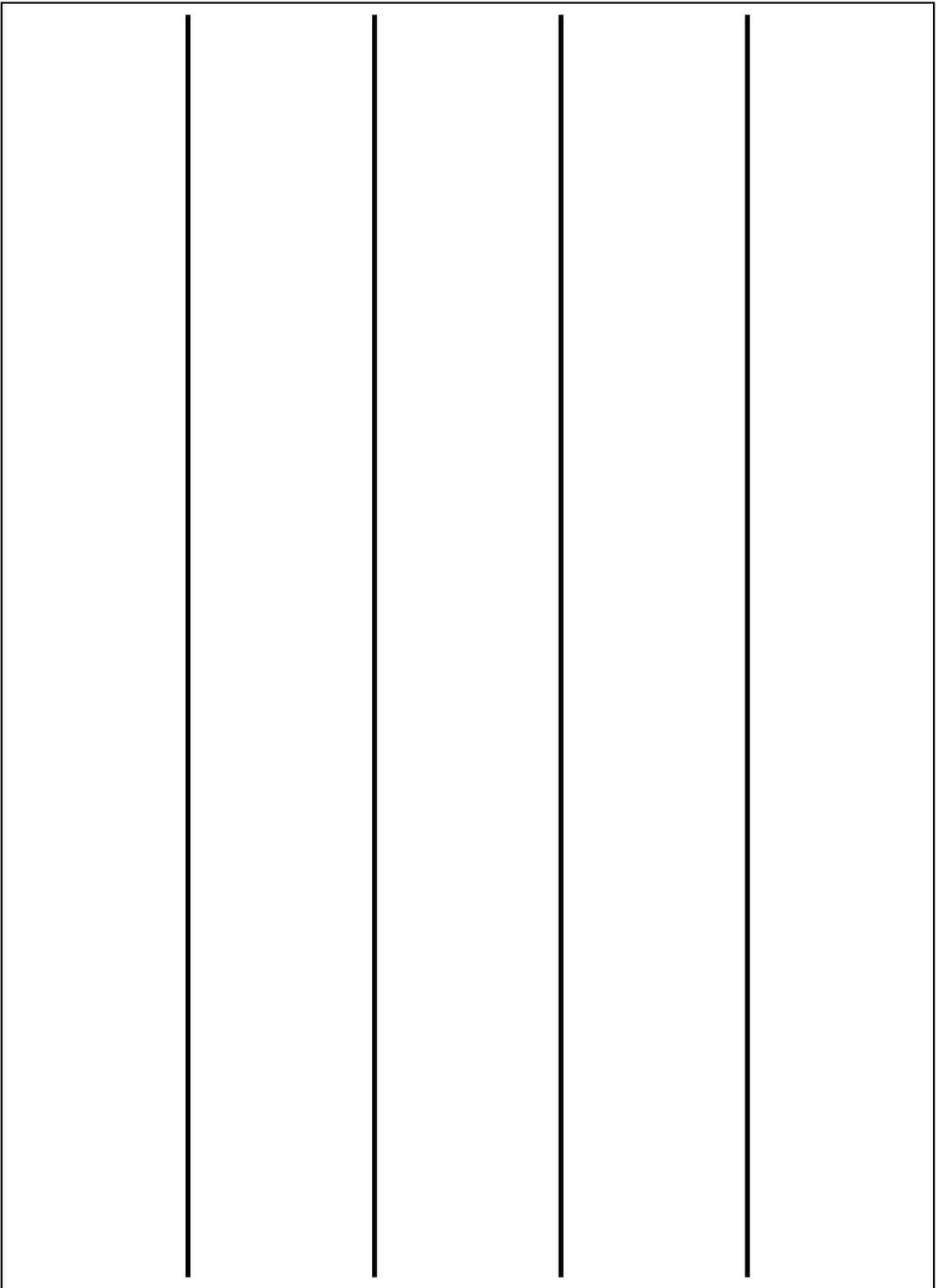


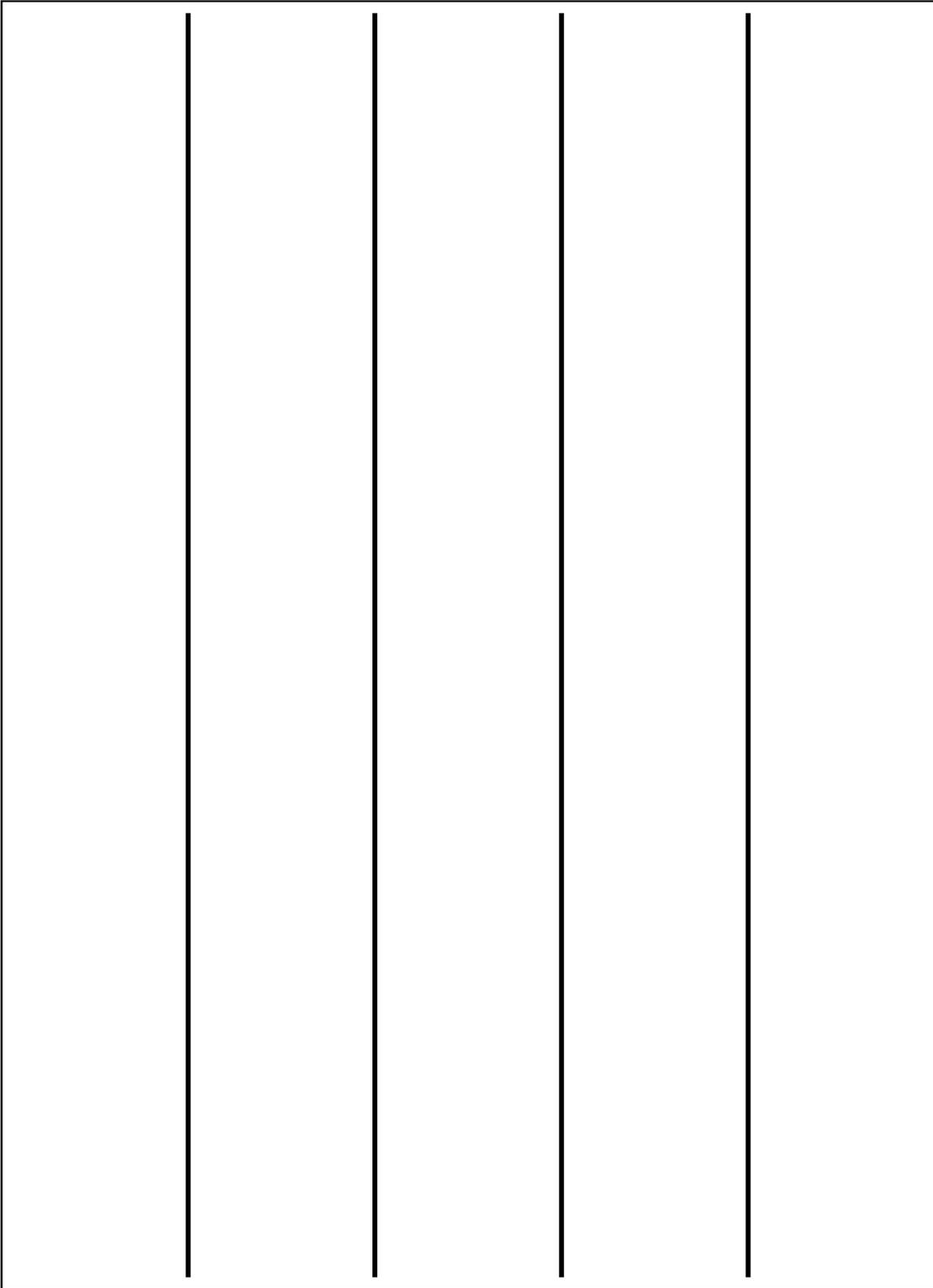


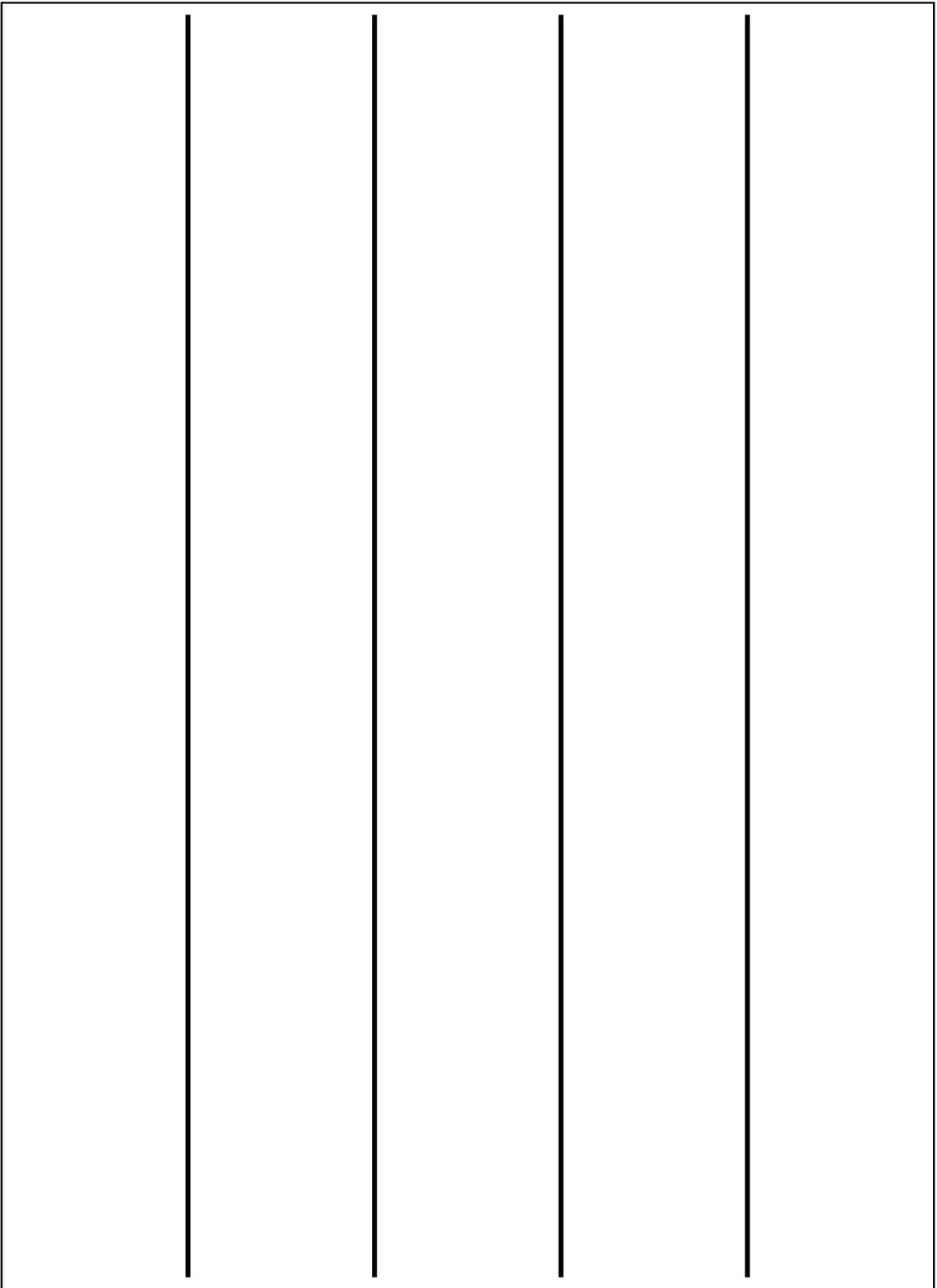


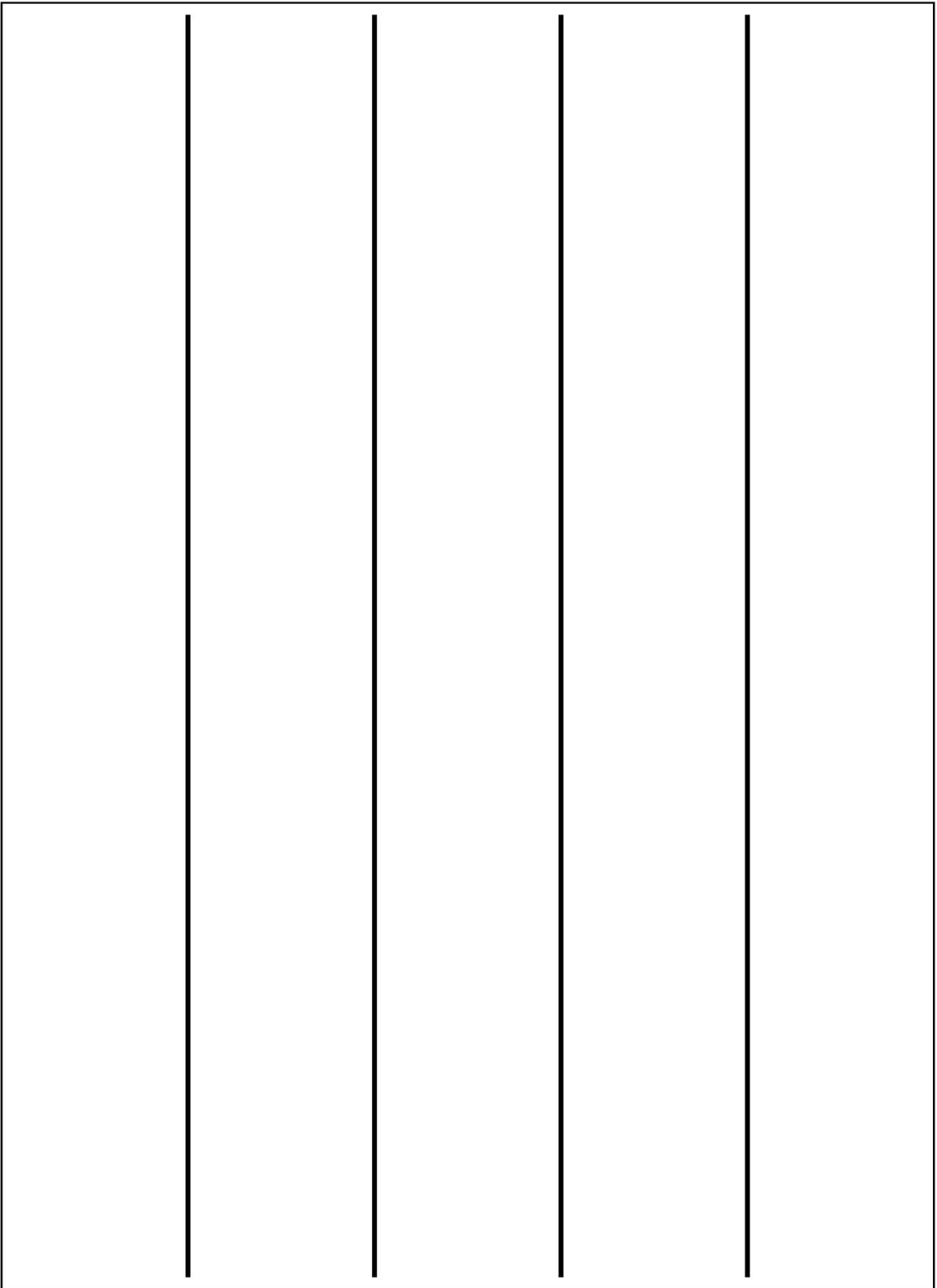


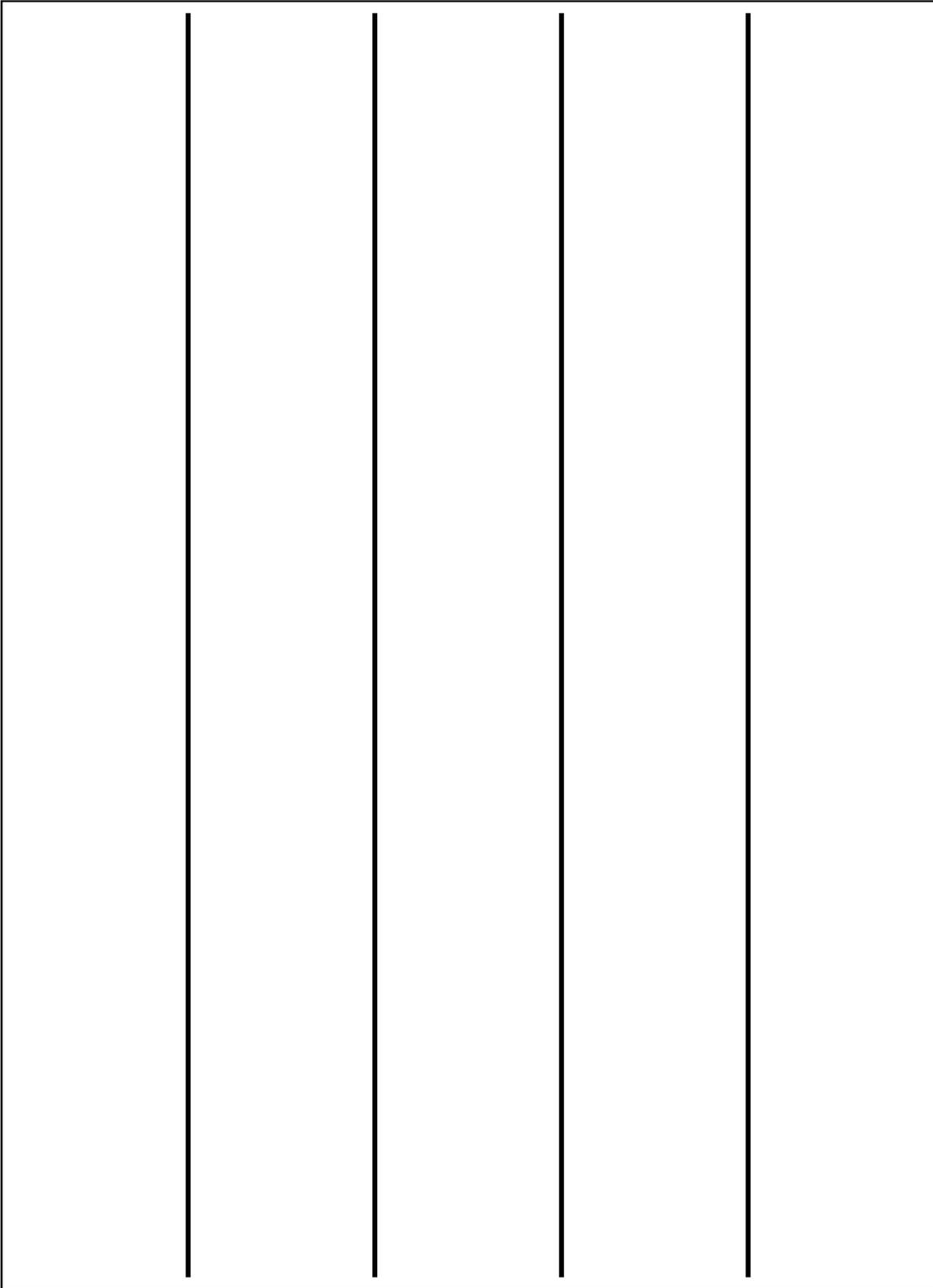


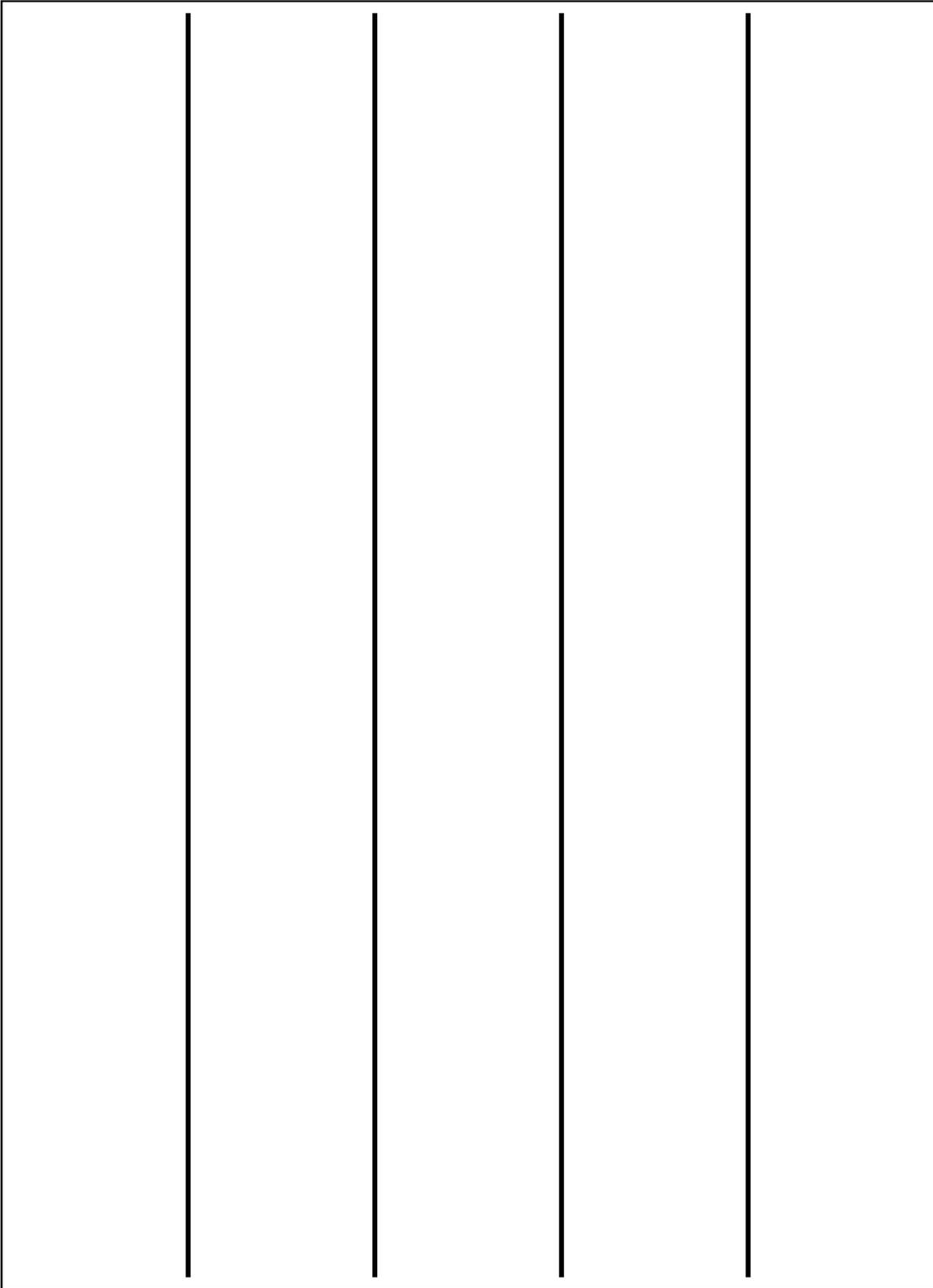


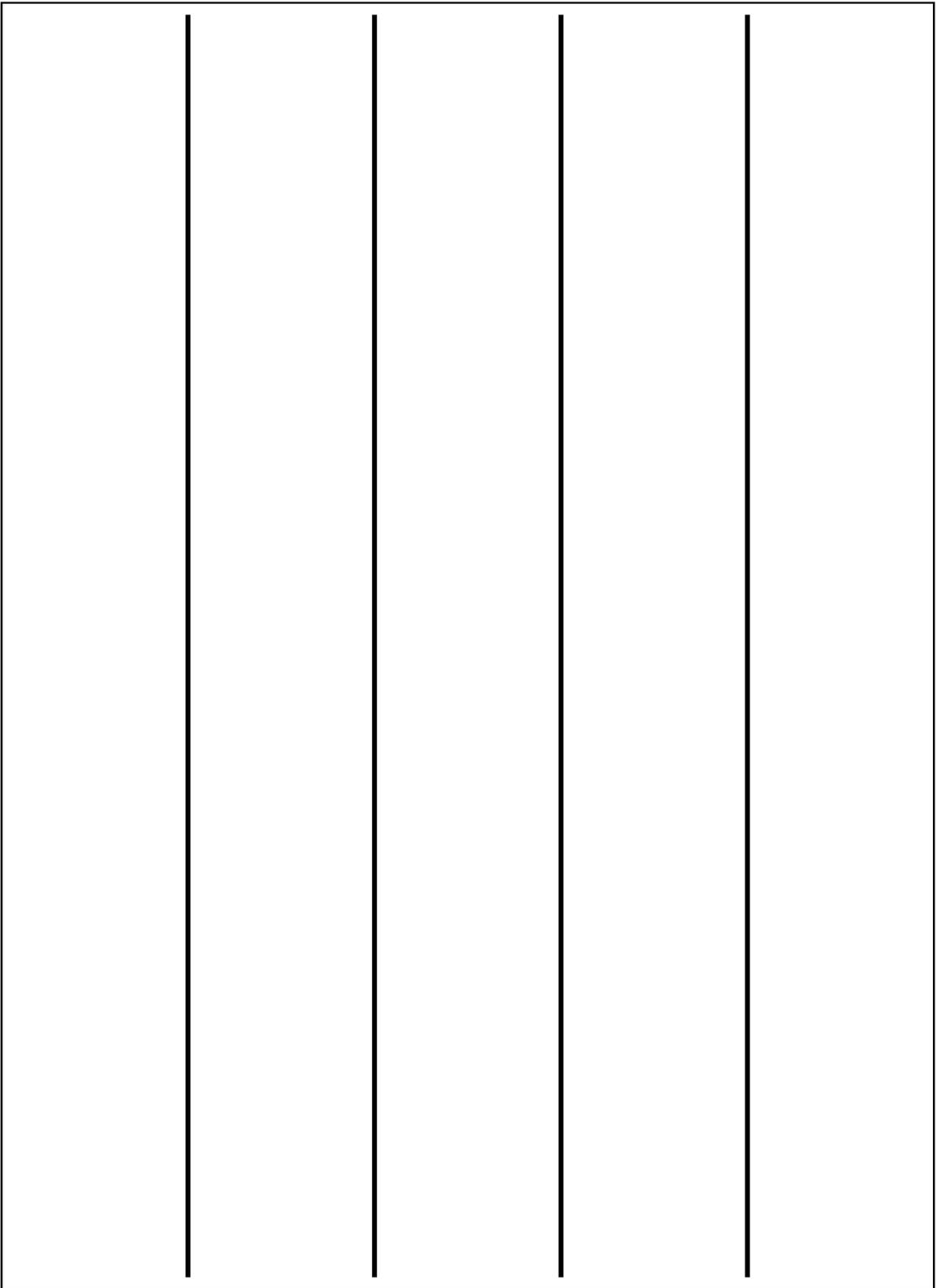












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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WENDY JAKSICK,

Petitioner,

CASE NO.: PR17-00445

v.

DEPT. NO.: 15

TODD B. JAKSICK, Individually, as Co-Trustee of the Samuel S. Jaksick Jr. Family Trust, and as Trustee of the SSJ's Issue Trust; MICHAEL S. KIMMEL, Individually and as Co-Trustee of the Samuel S. Jaksick Jr. Family Trust; STANLEY S. JAKSICK, Individually and as Co-Trustee of the Samuel S. Jaksick Jr. Family Trust; KEVIN RILEY, Individually, as Former Trustee of the Samuel S. Jaksick Jr. Family Trust, and as Trustee of the Wendy A. Jaksick 2012 BHC Family Trust, INCLINE TSS, LTD.; DUCK LAKE RANCH, LLC; SAMMY SUPERCUB LLC, SERIES A,

CASE NO.: PR17-00446

DEPT. NO.: 15

VERDICT

Respondents.

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1 We, the jury, duly impaneled in the above-entitled action,
2 find that Petitioner, Wendy Jaksick, has proven her **breach of**
3 **fiduciary duty claim**, by a preponderance of evidence, against:

4 (Please circle only one for each line item)

5 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
6 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
7 TODD JAKSICK (as Co-Trustee of Family Trust)	<input checked="" type="radio"/> YES	NO
8 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
9 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input type="radio"/> NO
10 TODD JAKSICK (as Trustee of Issue Trust)	<input checked="" type="radio"/> YES	NO

11 We, the jury, duly impaneled in the above-entitled action,
12 find that Petitioner, Wendy Jaksick, has proven her **civil**
13 **conspiracy and aiding and abetting claim**, by preponderance of
14 evidence, against:

15 (Please circle only one for each line item)

16 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
17 KEVIN RILEY (individually)	YES	<input type="radio"/> NO
18 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input type="radio"/> NO
19 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
20 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
21 TODD JAKSICK (individually)	YES	<input type="radio"/> NO
22 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input type="radio"/> NO
23 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input type="radio"/> NO
24 MICHAEL KIMMEL (individually)	YES	<input type="radio"/> NO

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We, the jury, duly impaneled in the above-entitled action, find that Petitioner, Wendy Jaksick, has proven her **aiding and abetting breach of fiduciary duty claim**, by a preponderance of evidence, against:

(Please circle only one for each line item)

KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
KEVIN RILEY (individually)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
KEVIN RILEY (as Trustee of BHC Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
TODD JAKSICK (individually)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
TODD JAKSICK (as Trustee of Issue Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
MICHAEL KIMMEL (individually)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO

We, the jury, duly impaneled in the above-entitled action, find that Petitioner, Wendy Jaksick, has proven her **fraud claim** by clear and convincing evidence, against:

(Please circle only one for each line item)

TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
TODD JAKSICK (individually)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO
TODD JAKSICK (as Trustee of Issue Trust)	YES	<input type="radio"/>	<input checked="" type="radio"/> NO

*(If you circled "yes" to **ANY** of the above claim(s) correlating to **ANY** respondent then proceed to and answer Questions 1 AND 2. If you answered "no" to **ALL** of the above then skip Questions 1 AND 2 and sign and date verdict form.)*

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1. We, the jury, duly impaneled in the above-entitled action, having found in favor of Petitioner, Wendy Jaksick, on one or more of her claims against one or more of the Respondents, find that she has proven by a preponderance of evidence the amount of her damages, assess her damages to be \$ 15,000.⁰⁰

2. Has Wendy Jaksick established by clear and convincing evidence that any of the Respondents acted with fraud, oppression, or malice?

(Please circle only one for each line item)

KEVIN RILEY	YES	<input checked="" type="radio"/> NO
STAN JAKSICK	YES	<input checked="" type="radio"/> NO
TODD JAKSICK	YES	<input checked="" type="radio"/> NO
MICHAEL KIMMEL	YES	<input checked="" type="radio"/> NO

DATED this 4 day of March, 2019.

Quen Sedler
FOREPERSON

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

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11 IN THE FAMILY DIVISION
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13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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15 IN AND FOR THE COUNTY OF WASHOE

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Plaintiff,

CASE NO. DV13-00656

v.

DEPT. NO. 12

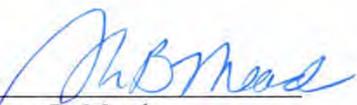
LYNDA L. HASCHEFF,

Defendant.

MOTION FOR CLARIFICATION OR DECLARATORY RELIEF REGARDING
TERMS OF MSA AND DECREE

Defendant, Lynda Hascheff (hereafter "Ms. Hascheff"), moves this Court for an Order clarifying, interpreting and construing an indemnity clause in the Parties' Marital Settlement Agreement dated September 1, 2013, that was approved, adopted, merged and incorporated into the Parties' Decree of Divorce entered on November 15, 2013. This Motion is brought pursuant to the Court's inherent power to construe and enforce its Decrees and is supported by the accompanying memorandum of points and authorities.

DATED this 15 day of June, 2020.

By 
Shawn B. Meador

POINTS AND AUTHORITIES

I. THERE IS A DISPUTE REGARDING THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS PURSANT TO THEIR MARITAL SETTLEMENT AGREEMENT

A. Introduction

On January 15, 2020, Judge Hascheff sent his former wife, Lynda Hascheff, an undated letter demanding that she indemnify him for legal fees and costs he insisted he was incurring in an "on-going" malpractice action against him. See, Judge Hascheff's letter and accompanying summary invoice, true and correct copies of which are attached as Exhibit 1 hereto.

Section 40 of the Parties Marital Settlement Agreement ("MSA") dated September 1, 2013, that was incorporated and merged into their Decree of Divorce, entered on November 15, 2013, states:

In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment.

After first attempting to resolve the issue on her own and with family assistance, and then retaining counsel, Ms. Hascheff ultimately discovered that the legal fees and costs at issue were not, in fact, incurred in an "on-going" malpractice action as Judge Hascheff falsely claimed. At the time he told her the malpractice action was "on-going" and he would be sending her "any additional invoices," the malpractice action had, in fact, been stayed and no fees or costs were being incurred in that action. To the contrary, the fees and costs for which Judge Hascheff sought indemnity were incurred in connection with Judge Hascheff's role as a percipient witness in a lawsuit to which he was not a named party.

The indemnity language quoted above, by its clear, express, and unambiguous terms, does not require Ms. Hascheff to finance Judge Hascheff's legal fees and costs he elected to incur as a percipient witness. Judge Hascheff now insists that it was "reasonable" or

1 “prudent” for him to have counsel to protect his interests as a percipient witness even though
2 no malpractice action had been filed. However, he did not have the right to make that
3 decision for Ms. Hascheff, and then demand that she finance his decision, without fully
4 advising her of the circumstances and gaining her agreement and consent in advance.

5
6 B. Procedural History

7 On July 31, 2018, a year and a half before he notified Ms. Hascheff of the malpractice
8 claim, Judge Hascheff was subpoenaed for his deposition in a lawsuit regarding an estate plan
9 (hereafter, the “Jaksick Action”). Judge Hascheff was not a party to the Jaksick Action. No
10 malpractice action had been filed (or even threatened to counsel’s knowledge). He later
11 testified as a percipient witness at trial of the Jaksick Action. Essentially all of the fees Judge
12 Hascheff now insists his former wife must pay were not incurred in the malpractice action,
13 but rather arise out of Judge Hascheff’s decision to retain a personal lawyer to protect him in
14 his role as a percipient witness in the Jaksick Action.

15
16 There can be no doubt the lawyer Judge Hascheff retained represented him personally
17 and did not represent the community estate or the parties’ jointly. Judge Hascheff’s lawyer
18 has provided a sworn declaration in which he states that the fees and costs were incurred “to
19 protect [Judge] Hascheff’s interests.” See, Declaration of Todd R. Alexander, Esq., a true and
20 correct copy of which is attached as Exhibit 2, at paragraphs 1 and 7.

21
22 Judge Hascheff and his lawyer further insist that his lawyer’s file, their discussions,
23 and the advice Judge Hascheff received from his lawyer, are protected by the attorney client
24 privilege, and thus, will not be disclosed to Ms. Hascheff. Id. at para. 10 and 11. The extent
25 to which Judge Hascheff’s lawyer is prepared to go to protect Judge Hascheff’s interests is
26 reflected in para. 12 of his declaration. He insists that the preparation of his declaration to
27 assist Judge Hascheff in seeking indemnity from Ms. Hascheff “is related to the malpractice
28 action and will be billed accordingly.” Id. at para. 12.

1 Judge Hascheff's counsel may certainly bill his client in any manner he deems
2 appropriate. That, however, does not make the time he devoted to assisting Judge Hascheff in
3 his efforts to obtain indemnity from his former wife, a defense of the malpractice claim for
4 which Ms. Hascheff would be responsible pursuant to the indemnity clause quoted above.
5 The indemnity clause requires Ms. Hascheff to indemnify Judge Hascheff for the defense of
6 the malpractice action; not for legal fees that he or his counsel claim are "related" to that
7 action. Neither Judge Hascheff nor his lawyer may rewrite the contract.
8

9 Judge Hascheff's lawyer now claims that he could tell from the July 2018 subpoena
10 that a malpractice claim was forthcoming. Id. at paragraphs 3 and 4. If true, Judge Hascheff
11 had a fiduciary obligation to notify Ms. Hascheff of his potential liability and his indemnity
12 claim against her. In breach of his fiduciary duty, he did not notify her of the subpoena or of
13 any concerns he may have had that his file and testimony could result in a viable malpractice
14 action against him.
15

16 Judge Hascheff either believed that the production of his file and his testimony about
17 his legal work would disclose facts that would support a viable malpractice claim against him,
18 or not.¹ If he feared his testimony and documents would implicate him, and create a risk of
19 liability for which he would seek indemnity, he had a fiduciary duty to notify his former wife
20 of the potential claim and her potential risk and liability. He chose not to notify her.
21

22 On December 26, 2018, Judge Hascheff was sued for malpractice by his former client,
23 Todd Jaksick, individually and as trustee of two trusts. A true and correct copy of the
24 malpractice complaint is attached as Exhibit 3 hereto.

25 Once again, notwithstanding her potential financial risk pursuant to the indemnity
26 clause, Judge Hascheff made the deliberate decision not to notify his former wife about the
27

¹ Judge Hascheff, of course, would have a legal obligation to produce his file and to testify honestly, regardless of whether he retained personal counsel to protect him. His retention of counsel would not change the underlying facts or documents in his file.

1 complaint. Rather, he waited for over a year, until January 15, 2020, to inform her. When he
2 finally notified her of the complaint, he did so in an incomplete and misleading way by
3 insisting that the malpractice action was “on-going” and that the fees he demanded she pay
4 were incurred in defending that malpractice action. His claims were misleading at best.
5

6 Immediately after the malpractice action was filed, Judge Hascheff and his former
7 client entered an agreement to stay the malpractice action until the Jaksick Action was
8 resolved. Thus, nothing in the malpractice suit was actively “on-going” and essentially no
9 fees or costs were incurred in defending the malpractice lawsuit. Ms. Hascheff has incurred
10 substantial legal fees simply trying to find out what fees were incurred in the malpractice
11 action as opposed to those incurred by Judge Hascheff as a percipient witness in the Jaksick
12 Action.
13

14 The indemnity clause at issue does not require Ms. Hascheff to finance Judge
15 Hascheff’s litigation choices as a percipient witness in a lawsuit to which he was not a party.
16 If Judge Hascheff believed he had done something wrong and was at risk of liability, so that it
17 would be “helpful” or “prudent” for him to have counsel to assist him as a percipient witness,
18 and that his former wife should share in that financial burden, at a bare minimum he had an
19 obligation to consult with her before incurring the expenses. She should have been advised of
20 the underlying facts, the litigation risks and why retention of counsel would be appropriate so
21 that she could make an informed decision about whether to share in the cost of Judge
22 Hascheff retaining personal counsel to protect his interests. That did not happen.
23

24 C. Judge Hascheff’s Misleading Demand for Indemnity

25 On January 15, 2020, after he had been incurring fees for a year and a half, Judge
26 Hascheff first notified Ms. Hascheff of the malpractice lawsuit and demanded that she pay
27 half of the alleged fees and expenses he incurred, ostensibly in defense of that lawsuit. See,
28 Exhibit 1. In his demand, he did not notify her about or provide her with a copy of the July

1 2018 subpoena. He did not provide her with a copy of the complaint in the malpractice
2 lawsuit. He did not provide her with itemized bills from his lawyer showing what work his
3 lawyer did on his behalf. He did not provide her with a copy of the stipulation to stay the
4 malpractice action. He did not tell her that he had incurred fees for months before the
5 malpractice suit was even filed. He did not provide her with any information about the
6 underlying facts and whether he believed there was a viable malpractice claim against him.
7

8 Rather, Judge Hascheff's letter claims the fees were incurred in the "on-going"
9 malpractice action – as if, in effect, he had filed an answer and engaged in discovery and other
10 pre-trial litigation regarding that lawsuit. Nothing in the letter reflects that the fees were
11 incurred for his personal lawyer to give him advice about his role as a percipient witness in
12 the Jaksick Action. He simply insisted that she owed him \$5,200.90. The only payment
13 reflected on the bill itself, as opposed to his handwritten notes, is a single payment of \$1,000.
14

15 Since that date, Ms. Hascheff has been forced to incur thousands of dollars in legal
16 fees in her attempt to obtain basic information from Judge Hascheff about the underlying facts
17 and circumstances. See, Email correspondence between Ms. Hascheff's counsel and Judge
18 Hascheff dated March 1, 2 and 3, 2020. True and correct copies of the email exchanges are
19 attached as Exhibit 4 hereto.
20

21 In his email of March 1, 2020, Judge Hascheff claimed the sum due from his former
22 wife was \$4,675.90 rather than the \$5,200.90 previously demanded. He falsely claimed that
23 he had provided all necessary information. He had not.

24 Judge Hascheff did not respond to counsel's email of March 3, 2020, until April 20,
25 2020. In that email, Judge Hascheff insisted that he had retained counsel to represent him in
26 his efforts to force Ms. Hascheff to pay half of the fees he insisted she owed. See, Email from
27 Judge Hascheff dated April 20, 2020, a true and correct copy of which is attached as Exhibit 5
28 hereto. Given Judge Hascheff's representation by counsel, Ms. Hascheff's counsel responded

1 to his lawyer. See, Email from counsel dated April 20, 2020. A true and correct copy of
2 counsel's email of April 20 is attached as Exhibit 6 hereto.

3 Judge Hascheff's counsel did not respond to counsel's email of April 20th until May
4 29, 2020. See, Letter from T. Torvinen dated May 29, 2020, a true and correct copy of which
5 is attached as Exhibit 7. That letter repeated Judge Hascheff's claims and demands but did
6 not address the issues and concerns raised in counsel's email of April 20th.

8 Counsel responded to the May 29th letter from Judge Hascheff's lawyer on June 2,
9 2020. See, Counsel's letter of June 2, 2020, a true and correct copy of which is attached as
10 Exhibit 8 hereto. Notwithstanding Ms. Hascheff's efforts to resolve this matter without
11 litigation and yet more legal fees, Counsel has not received a response to the June 2nd letter.
12 Counsel has recently requested additional information relevant to this matter. See, Counsel's
13 letter dated June 11, 2020, a true and correct copy of which is attached as Exhibit 9 hereto.
14 To date, no response has been forthcoming.²

16 II. JUDGE HASCHEFF DID NOT INCUR THE FEES FOR
17 WHICH HE DEMANDS PAYMENT IN THE MALPRACTICE
18 ACTION AND IS ESTOPPED FROM SEEKING INDEMNITY

19 The MSA does not authorize Judge Hascheff to keep the malpractice claim a secret
20 from his former wife. Nor does it authorize him to retain personal counsel to protect him in
21 his role as a percipient witness. It does not authorize him to make unilateral decisions about
22 how the claim should be addressed but then, over a year later, demand that Ms. Hascheff
23 indemnify him for half of the costs of his unilateral litigation choices.

24 Their interests are not identical. As an elected official, for example, Judge Hascheff
25 may have reputational issues and concerns he was motivated to protect. Ms. Hascheff would

26 _____
27 ² Counsel concedes that Judge Hascheff's counsel has had limited time to respond to this correspondence. Ms.
28 Hascheff's position, however, is that Judge Hascheff has an obligation to voluntarily provide this information
without being asked.

1 have no similar concerns about his reputation and would not be interested in paying his
2 personal lawyer's legal fees to obtain such advice and protection.

3 In every contract in Nevada there is an implied covenant of good faith and fair
4 dealing. Hilton Hotels, Corp. v. Butch Lewis Productions, Inc., 107 Nev. 226, 808 P.2d 919
5 (1991). Judge Hascheff's decisions are not consistent with his obligation to act in good faith
6 and treat his former wife fairly. He ignored her entirely and made whatever decisions he
7 deemed appropriate.

8
9 At a minimum, if the language of the MSA could otherwise reasonably be interpreted
10 to require Ms. Hascheff to pay these fees, Judge Hascheff should be equitably estopped from
11 asserting such a claim based on his breach of fiduciary duty and his breach of the covenant of
12 good faith and fair dealing. See, e.g., NGA No. 2 Ltd. Liability Co. v. Rains, 113 Nev. 1151,
13 946 P.2d 163 (1997); Vancheri v. GNLV. Corp., 105 Nev. 417, 777 P.2d 366 (1989); Pink v.
14 Buseh, 100 Nev. 684, 691 P.2d 456 (1984).

15
16 III. THIS COURT HAS JURISDICTION TO CONSTRUE AND
17 INTERPRET THE MSA AND DECREE OF DIVORCE

18 This Court has inherent power to construe and interpret its judgments and decrees.
19 Mizrachi v. Mizrachi, 132 Nev. Adv. Op. 66, 385 P.3d 982 (Ct. App. 2016). A settlement
20 agreement is a contract and in evaluating the language of the agreement, the court should
21 apply the principles of contract interpretation. Id., see also, May v. Anderson, 121 Nev. 668,
22 119 P.3d 1254 (2005) Shelton v. Shelton, 119 Nev. 492, 78 P.3d 507 (2003).

23 In interpreting a contract, the court may not modify the parties' agreement or create a
24 new contract. Mohr Park Manor Inc. v. Mohr, 83 Nev. 107, 424 P.2d 101 (1981). If the
25 agreement is not ambiguous, contractual interpretation is a question of law. Galardi v. Naples
26 Polaris, LLC., 129 Nev. 306, 301 P.3d 364 (2013). An agreement is not ambiguous simply
27

1 because the parties disagree regarding its meaning. Id. An agreement is ambiguous only if it
2 can reasonably be interpreted in more than one way. Id.; Mizrachi.

3 An interpretation that is reasonable is preferred to a result that would be harsh and
4 unreasonable. Mohr Park; Shelton. Contracts negotiated by a spouse who is a lawyer are
5 subject to close scrutiny due to the fiduciary relationship and potential attorney client
6 relationship between them.³ Williams v Waldman, 108 Nev. 466, 836 P.2d 614 (1992).

8 Bottom line, it is the court's duty to determine the parties' true intent. In doing so, the
9 court may take into account the circumstances surrounding its execution as well as subsequent
10 acts. Shelton.

11 The plain language of the MSA, incorporated in the Decree of Divorce, simply, clearly
12 and unambiguously requires Ms. Hascheff to pay one-half of the legal fees incurred in the
13 defense of the malpractice action (once it has been sued) but does not require her to pay Judge
14 Hascheff's legal fees in connection with his personal lawyer's efforts to protect him in his role
15 as a witness. If Judge Hascheff desired an indemnity clause that gave him unilateral authority
16 to make all decisions and that required Ms. Hascheff to indemnify him for any fees or costs in
17 any way related to a malpractice claim, whether filed or not, he could have had his lawyer
18 draft the MSA in that way rather than using the language included in section 40 his lawyer
19 drafted.
20

21 It would not be reasonable to interpret the simple language of the MSA to allow Judge
22 Hascheff to keep everything secret from his former wife, to make all decisions unilaterally for
23 his benefit, to keep the underlying facts and potential malpractice liability and legal advice he
24

25 _____
26 ³ During negotiation of the MSA, Judge Hascheff prevailed upon his then wife to ignore her counsel, insisted her
27 counsel was incompetent, that she should file a bar complaint against him, that her counsel was simply trying to
28 run up her bill and churn the file, and that she should trust and rely on him rather than her counsel to protect her
and treat her fairly. He even insisted that he would pay her legal fees, only to have his counsel prepare an MSA
that did not honor that promise.

1 received secret from her, but to then require his former wife to pay half of his fees. That
2 would be a harsh and unreasonable result.⁴

3 As noted in Shelton, the parties' actions following execution of the agreement may
4 give the Court guidance with respect to the parties' intent. Here, in July of 2018, Judge
5 Hascheff did not notify Ms. Hascheff of his fear that he would be sued for malpractice when
6 the subpoena was served on him and he elected to retain counsel. One can reasonably infer
7 that he did not do so because he did not believe his fees for personal counsel to protect his
8 interests before any malpractice action was filed, were covered by the language of the
9 indemnity clause.

11 Judge Hascheff did not notify Ms. Hascheff for over a years after he was served with
12 the malpractice lawsuit. One can reasonably infer that he did not do so because the
13 malpractice action was immediately stayed, and he knew he was not incurring fees to defend
14 that action.

16 But then the parties' daughter made the decision not to invite Judge Hascheff to her
17 wedding, which took place in November of 2019. It appears that Judge Hascheff blamed his
18 former wife. Ms. Hascheff believes that her former husband demanded she pay his personal
19 legal fees, well over a year after he chose to incur them, not because he believes that section
20 40 requires her to pay those fees, but rather, to bully and punish her because he is estranged
21 from his daughter.

23 Furthermore, it is worth noting that the nature of the allegations in the malpractice
24 actions suggest that Judge Hascheff knew or should have known of potential problems with
25 his representation of the various Jaksick individuals and trusts prior to the date on which the

27
28 ⁴ If Judge Hascheff's position is that his former wife should simply trust him to make decisions that protect her
best interests it reinforces the fact of his fiduciary obligation to her.

1 parties signed the MSA. He did not, however, notify Ms. Hascheff of the risk of potential
2 malpractice notwithstanding his warranty of full disclosure.

3 The complaint alleges that Judge Hascheff simultaneously represented multiple parties
4 who had potentially conflicting interests. Ms. Hascheff is informed and believes that Judge
5 Hascheff may not have obtained written conflict waivers from those various clients before
6 simultaneously representing all of them. That alone, if nothing else, gave Judge Hascheff
7 knowledge of a potential malpractice claim, and thus, a duty to notify Ms. Hascheff before
8 she agreed to the indemnity clause. He did not do so.

9
10 If this Court determines that the indemnity language quoted above is ambiguous, and
11 that parol evidence is admissible, Ms. Hascheff will ask this Court to allow her to conduct
12 discovery, among other things, with respect to whether Judge Hascheff obtained written
13 conflict waivers and when he knew or should have known facts that put him on notice of the
14 potential risk of a claim against him. If such discovery shows he was aware of facts that
15 would put him on notice of a potential claim, contrary to his warranties in the MSA, Ms.
16 Hascheff will ask this Court to set aside this term of the MSA altogether.

17
18 IV. MS. HASCHEFF IS ENTITLED TO RECOVER HER FEES AND COSTS

19 The Parties' MSA contains a prevailing party fee clause. See, MSA at section 35. In
20 addition, this Court has authority to enter a fee award as part of its continuing jurisdiction.
21 See, NRS 125.150(3); Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1990); Mack-
22 Manley v. Mack, 122 Nev. 849, 138 P.2d 525 (2006).

23
24 Ms. Hascheff is not a lawyer. She cannot represent herself on a level playing field
25 with her former husband in connection with this matter. Judge Hascheff's skills and
26 reputation as a lawyer allowed him to become a member of the bench. Ms. Hascheff was
27 forced to incur legal fees simply to obtain accurate information her counsel believed was
28 necessary to allow him to give her thoughtful advice. It cost Judge Hascheff nothing to refuse

1 to provide the information her counsel believed was necessary. Ms. Hascheff believes that
2 Judge Hascheff had an obligation to voluntarily provide this accurate information without her
3 having to even ask. Rather than doing so, he still insists she is not entitled to the information
4 her counsel has requested, but that she must simply pay the bills he demands.

5 Ms. Hascheff has not refused to indemnify Judge Hascheff for fees covered by section
6 40 of the MSA. She refused to pay the fees he voluntarily and unilaterally elected to incur
7 (and keep secret from her) for his personal lawyer to protect him in connection with his role
8 as a percipient witness. She had to incur legal fees to discover that the fees he demanded she
9 pay were not incurred in the malpractice lawsuit. When Ms. Hascheff and her counsel sought
10 information on which they could evaluate, for themselves, whether Judge Hascheff's choices
11 were reasonable and prudent, they were told they were not entitled to such information and
12 that it was protected by Judge Hascheff and his counsel's attorney client privilege.
13

14 Ms. Hascheff never took the position that she would not pay her half of the fees and
15 costs incurred in defending the malpractice action. She has repeatedly asked Judge Hascheff
16 to share with her what those fees are. She has asked for information regarding the underlying
17 claim. She has asked Judge Hascheff to provide the authority on which he relies in making
18 his assertions and denying hers. She has done everything possible to resolve this issue
19 without the need for motion practice. And all she has accomplished by her efforts is a large
20 bill for legal fees.
21

22
23 V. RELIEF REQUESTED

24 Based on the foregoing, Ms. Hascheff asks this Court to enter an Order clarifying that
25 Ms. Hascheff is only responsible for fees incurred in the malpractice action and that she is not
26 responsible for the fees or costs he chose to incur to have personal counsel protect his
27 interests in connection with his role as a percipient witness in the Jaksick Action.

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Judge Hascheff should be obligated to pay the costs and fees Ms. Hascheff incurred in connection with her attempts to obtain information, respond to his demands and engage in this motion practice to establish her rights and obligations.

AFFIRMATION

The undersigned affirms that this document does not contain the Social Security number of any person.

DATED this 15 day of June, 2020.

WOODBURN AND WEDGE

By 
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

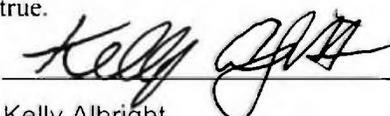
Pierre A. Hascheff)
)
)
 vs.)
)
 Lynda L. Hascheff)
)
)

FAMILY COURT MOTION/OPPPOSITION NOTICE (REQUIRED)
CASE NO. DV13-00656
DEPT. NO. 12

NOTICE: THIS MOTION/OPPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X .	YES	NO
	1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input type="checkbox"/>
	IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are exempt from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will not be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: June 16th, 2020 Signature: 
 Print Name: Kelly Albright
 Print Address: 6100 NEIL ROAD, SUITE 500
RENO, NV 89511
 Telephone Number: 775-688-3000

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 10th day of June, 2020



Kelly Albright

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Nevada Supreme Court E-Filing
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 16 day of June, 2020.



Kelly Albright, Paralegal

EXHIBIT LIST

<u>Exhibit #</u>	<u>Description</u>	<u>No. of Pages</u>
1	Judge Hascheff's Letter & Accompanying Summary Invoice	4
2	Declaration of Todd R. Alexander Esq.	3
3	Malpractice Complaint	7
4	Email Correspondence between Ms. Hascheff's counsel And Judge dated March 1, 2, and 3, 2020	4
5	Email from Judge Hascheff dated April 20, 2020	3
6	Email from counsel dated April 20, 2020	3
7	Letter from T. Torvinen dated May 29, 2020	3
8	Counsel's response to the May 29, 2020 letter from Judge Hascheff's lawyer dated June 2, 2020	5
9	Counsel's letter dated June 11, 2020	3

FILED
Electronically
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Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 1

Lynda

I was sued by a client
for malpractice. The case is
on going.

The attorneys invoice is enclosed.

Section 40 of the Settlement
agreement requires you must
pay $\frac{1}{2}$ the Fees & costs. I don't
believe its fair that I pay the
whole bill. I paid off the balance
so I need you to send me a check
for \$200.90 by Jan. 24 & I'll send you
any additional invoices

Rec'd
1/15/20

P. It.

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World (*Malpractice Ins. Co.*)
 BILL THROUGH SERENGETI

Page: 1
 10/23/2019

OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 10

ATTN: Andy Kenney
INSUR. adjuster

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$7,351.80

Stmt Date	Stmt #	Billed	Due
02/13/2019	6	826.80	1.80
03/11/2019	7	7,425.00	7,350.00
			7,351.80

10/18/2019 Payment - Thank you PAH Limited LLC -1,000.00

BALANCE DUE \$6,351.80

FEES	EXPENSES	FINANCE CHARGE	PAYMENTS
11,850.00	1.80	0.00	5,500.00

\$6,351.80

*ATTYS Fees
 For legal malpractice
 claim*

*paid ck # 2308
 12/8/19*

10/10/10

10/10/10

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World
 BILL THROUGH SERENGETI

Page: 1
 08/27/2019
 OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 8

ATTN: Andy Kenney

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$11,851.80

Stmt Date	Stmt #	Billed	Due
10/10/2018	1	1,300.00	1,300.00
11/08/2018	3	150.00	150.00
12/07/2018	4	2,150.00	2,150.00
02/13/2019	6	826.80	826.80
03/11/2019	7	7,425.00	7,425.00
			<u>11,851.80</u>
03/25/2019	Payment - Thank you Allied World		-1,300.00
03/25/2019	Payment - Thank you Allied World		-150.00
04/08/2019	Payment - Thank you PAH Limited LLC		-1,000.00
04/16/2019	Payment - Thank you Allied World		-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC		-1,000.00
	TOTAL PAYMENTS		<u>-4,500.00</u>
	BALANCE DUE		<u>\$7,351.80</u>

FEES	EXPENSES	FINANCE CHARGE	PAYMENTS
11,850.00	1.80	0.00	4,500.00

$11851.80 - 1450.00 = 10401.80$
 $\times 50\%$
5200.90
 6412.90 $\times \frac{1}{2}$

\$7,351.80

[REDACTED]

[REDACTED]

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EXHIBIT 2

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
) ss.
3 COUNTY OF WASHOE)

4 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

5 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
6 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

7 2. I was retained by Hascheff once he received a multi-page subpoena requesting
8 any and all documents, correspondence, communications etc. with respect to his estate
9 planning and related advice to Samuel Jaksick and related parties.

10 3. It was prudent on Hascheff's part to retain counsel immediately because the
11 information requested clearly was aimed at undermining his estate plan and advice which
12 could lead to a malpractice action depending on the jury verdict.

13 4. It was clear that Hascheff was being accused of malfeasance and mishandling
14 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
15 their share of the estate.

16 5. There was also a possible claim by another beneficiary that Hascheff provided
17 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
18 brother and sister with a substantial damage claim against him.

19 6. Hascheff was clearly at risk depending on the outcome of the underlying
20 litigation.

21 7. There were two days of depositions and two days of trial testimony, not to
22 mention countless meetings with various attorneys to protect Hascheff's interests.

23 8. The fees and costs incurred in this case were necessary and reasonable to
24 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
25 million dollar claim against him outside the coverage limits of his applicable insurance policy.

26 9. It should be noted that malpractice actions are not typically filed until the
27 conclusion of the underlying litigation to determine whether the attorney is guilty of
28 malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
775) 786-6868

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EXHIBIT 3

1 **KENT R. ROBISON, ESQ. – NSB #1167**
2 krobison@rssblaw.com
3 **LINDSAY L. LIDDELL, ESQ. – NSB #14079**
4 lliddell@rssblaw.com
5 **Robison, Sharp, Sullivan & Brust**
6 71 Washington Street
7 Reno, Nevada 89503
8 Telephone: 775-329-3151
9 Facsimile: 775-329-7169
10 *Attorneys for Todd B. Jaksick, Individually, and as Trustee*
11 *of the Todd B. Jaksick Family Trust and as Trustee the TBJ Trust*

REC'D & FILED
2018 DEC 26 PM 1:28
SUSAN KENRIWETHER
C. TORRES
BY _____
CLERK
DEPT. CLERK

8 **IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 TODD JAKSICK, Individually, and as Trustee
11 of the Todd B. Jaksick Family Trust and as
12 Trustee of the TBJ Trust,

13 Plaintiffs,

Case No. _____

Dept. No. _____

14 vs.

15 PIERRE HASCHEFF,

16 Defendant.
17 _____/

18 **COMPLAINT**

19 As and for their complaint against the Defendant, Plaintiffs allege as follows:

- 20 1. Todd Jaksick (“Todd”) is a Trustee of the SSJ’s Issue Trust (“Issue Trust”).
21 2. Todd is a Trustee of the Todd B. Jaksick Family Trust and the TBJ Trust.
22 3. Todd is Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Sam’s Family
23 Trust”).
24 4. Todd is a party to an Indemnification Agreement drafted for him by Defendant.
25 5. Todd is manager of Incline TSS LLC (“TSS”), a company that was devised by
26 Defendant for the purpose of receiving title to a house located on Lake Shore Boulevard, Incline
27 Village, Nevada (“the Lake Tahoe House”).
28 6. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
membership are being challenged as a result of Defendant’s legal services.

1 7. The TBJ Trust is a 23% owner of TSS and its membership interest is being
2 challenged as a result of Defendant's legal services.

3 8. Defendant was an attorney, and as such, had a duty to use such skill, prudence, and
4 diligence as other members of his profession commonly possess and exercise.

5 9. As Plaintiffs' attorney, Defendant owed a duty to Plaintiffs to use skill, prudence,
6 and diligence as lawyers of ordinary skill and capacity possess in exercising and performing tasks
7 which they undertake.

8 10. Todd is Trustee of the Todd Jaksick Family Trust, a 23% owner of TSS, owner of
9 the Lake Tahoe House. As a result of Defendant's negligence, Todd has been sued in his capacity
10 as Trustee of the Todd Jaksick Family Trust.

11 11. Todd is Trustee of the TBJ Trust, a 23 % owner of TSS, owner of the Lake Tahoe
12 House. As a result of Defendant's negligence, Todd has been sued as Trustee of the TBJ Trust.

13 12. Todd is manager of various limited liability companies in which Sam's Family
14 Trust holds membership interests. As a result of the Defendant's negligence, Todd is being sued
15 in his capacity as manager of the various limited liability companies.

16 13. Defendant provided legal services to and for Todd and his father Samuel S. Jaksick
17 ("Sam") from 2007 through 2012.

18 14. Defendant's legal services, among others, included;

19 a. Drafting Todd's Indemnification Agreement;

20 b. Creating TSS for the purposes of having an option to buy the Lake Tahoe
21 House;

22 c. Drafting an option for TSS to acquire title to the Lake Tahoe House;

23 d. Drafting Sam's Second Amendment Trust, with Todd as a Co-Trustee and
24 beneficiary;

25 e. Facilitating TSS's exercise of the option it had to purchase the Lake Tahoe
26 House; and

27 f. Causing Todd's Family Trust and The TBJ Trust to be 23% owners of TSS.

28 15. Defendant's legal services provided to and for Todd, The TBJ Trust and Todd's

1 Family Trust were done in a negligent and careless manner. Those legal services caused Todd to
2 be sued in Second Judicial District Court, Case No. PR17-0045 and Case No. PR17-0046 filed in
3 Washoe County, Nevada.

4 16. Defendant's negligent legal services have resulted and caused the Plaintiffs to
5 sustain substantial damages well in excess of \$100,000. Stanley Jaksick and Wendy Jaksick have
6 both brought claims against Todd in Case No. PR17-00445 and Case No. PR17-00446.

7 17. As a proximate cause of Defendant's negligent and careless legal services provided
8 to and for Plaintiffs, Todd was sued in December of 2017 and February of 2018. Those lawsuits
9 were filed by beneficiaries of Sam's Family Trust and of The Issue Trust and the lawsuits gave
10 Todd first notice of the Defendant's negligence.

11 18. On December 17, 2018, expert reports were exchanged in the lawsuits filed by
12 Sam's daughter, Wendy. These reports first provided Todd, individually and as Trustee, with
13 actual notice of the Defendant's negligence. These reports appear to be based on misinformation
14 and wrongfully accusing Defendant of committing egregious and serious errors in performing
15 estate planning services for Samuel S Jaksick, Jr. Nonetheless, these reports gave Todd his first
16 actual notice of the alleged wrongdoing by the Defendant as follows:

17 a. The estate plan devised by Defendant was a bad one and subjected Todd to
18 lawsuits;

19 b. The Indemnification Agreement was poorly drafted and subjected Todd to
20 conflicts of interest;

21 c. The Lake Tahoe House documents were poorly devised and implemented
22 causing Todd to get sued; and

23 d. The Second Amendment was poorly drafted and implemented, causing
24 Todd to get sued.

25 19. Todd has been directly damaged by Defendant's negligence. The Plaintiffs also
26 contracted with Defendant requiring Defendant to provide competent legal advice and services.
27 Defendant breached the contracts.

28 20. Todd is entitled to be indemnified by Defendant for any sums he pays to Wendy

1 and/or Stanley Jaksick in the litigation filed by Wendy and Stanley.

2 21. Todd is entitled to recover all fees and costs incurred in defending Wendy's and
3 Stanley's lawsuits.

4 22. Todd is entitled to recover fees and costs incurred in this case.

5 **FIRST CLAIM—NEGLIGENCE**

6 23. Plaintiffs incorporate all prior paragraphs and allegations.

7 24. Defendant and Plaintiffs had a lawyer/client relationship from 2007 to January
8 2013.

9 25. Defendant was engaged as Plaintiffs' counsel and attorney.

10 26. Defendant provided legal services for the Plaintiffs as described hereinabove.

11 27. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
12 membership are being challenged as a result of Defendant's legal services.

13 28. The TBJ Trust is a 23% owner of TSS and its membership interest is being
14 challenged as a result of Defendant's legal services.

15 29. Defendant breached his duty of care to the Plaintiffs as described hereinabove.

16 30. Defendant's breaches of duty constitute legal malpractice and professional
17 negligence.

18 31. Defendant's breaches of duties of care owed to the Plaintiffs, his malpractice and
19 his professional negligence as described herein above caused Plaintiffs to sustain damages in
20 excess of \$15,000.

21 32. Plaintiffs are entitled to recover all damages caused by Defendant's breaches of
22 duties, negligence and malpractice, according to proof, in addition to attorney's fees incurred
23 herein.

24 33. Plaintiffs did not know of and did not have information to be aware of Defendant's
25 negligence, breaches of duties and of the malpractice until December of 2017.

26 **SECOND CLAIM—BREACH OF CONTRACT**

27 34. Plaintiffs incorporate all prior paragraphs and allegations.

28 35. Plaintiffs and Defendant entered into contracts described hereinabove, whereby

1 Defendant was to and did provide legal services for Plaintiffs.

2 36. The contracts for professional services were supported by adequate consideration.

3 37. The contracts were breached by Defendant.

4 38. The Plaintiffs performed all aspects and requirements of the contracts.

5 39. As a result of Defendant's breaches of the contracts described hereinabove,
6 Plaintiffs have sustained consequential damages in excess of \$15,000 and are entitled to fees and
7 costs.

8 **THIRD CLAIM—INDEMNIFICATION**

9 40. Plaintiffs incorporate herein all prior paragraphs and allegations.

10 41. Defendant's negligence and breaches of contract have caused Plaintiffs to be sued
11 by Stanley Jaksick and Wendy Jaksick in Case Nos. PR17-00445 and PR17-00446.

12 42. Plaintiffs adamantly deny any wrongdoing regarding the issues raised in the
13 lawsuits filed by Wendy and Stanley. Plaintiffs are aware of the Defendant's substantial efforts to
14 protect Samuel S. Jaksick, Jr. and his heirs and beneficiaries, and Plaintiffs believe and allege
15 herein that the Defendant proceeded at all times in good faith and with the best interests of the
16 Plaintiffs and Samuel S. Jaksick, Jr. as his first priority. However, if Plaintiffs are found liable to
17 Stanley and/or Wendy or should Plaintiffs, or any one of them, be required to pay in any way
18 Stanley and/or Wendy, Plaintiffs are entitled to recover such amounts by way of indemnification
19 from Defendant.

20 43. Plaintiffs have been obligated to and have paid legal fees for defending Wendy and
21 Stanley's lawsuit in amounts in excess of \$100,000. Plaintiffs are entitled to be indemnified for all
22 fees and costs paid to date and for all fees and costs incurred in the future for defending Plaintiffs
23 in the Wendy and Stanley lawsuits. This indemnification claim has therefore accrued.

24 WHEREFORE, Plaintiffs seek judgment as follows;

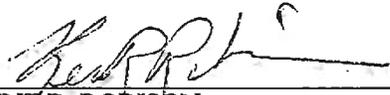
- 25 1. For consequential damages according to proof in excess of \$15,000;
26 2. For indemnification of any and all sums Plaintiffs must pay Wendy and/or Stanley;
27 3. For fees and costs incurred in the Wendy and Stanley lawsuits;
28 4. For fees and costs incurred in this action; and

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5. For such other relief as is appropriate under the circumstances.

DATED this 26th day of December 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



KENT R. ROBISON
LINDSAY L. LIDDELL
*Attorneys for Todd B. Jaksick, Individually, and as
Trustee of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust*

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EXHIBIT 4

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>

Sent: Sunday, March 01, 2020 11:58 AM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: [SPAM - keyword checking] - Indemnity

I was informed by Lucy Mason that I need to contact you regarding my reimbursement for attorneys fees and costs incurred pursuant to section 40 of the settlement agreement dated September 1, 2013.

The amount owed to date by Lynda is \$4675.90. I provided all the documentation that Lucy requested which I assume you have which includes the billing invoices. I intend to enforce the settlement agreement because I've been sued for malpractice. A subsequent action or set off is necessary because Lynda has refused to indemnify me pursuant to section 40. We can avoid this action by her simply making the payment referenced above within 10 days of this notice.

If the payment is not made within this 10 day I will proceed accordingly.

Thank you for your consideration in this matter.

Sent from my iPad

From: Shawn Meador
Sent: Monday, March 02, 2020 8:37 AM
To: Pierre Hascheff
Cc: Kelly C. Albright
Subject: RE: Indemnity

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

Lynda would certainly like to avoid the need for motion practice if possible. I need the requested information in order to give her thoughtful advice. If you elect, instead, to file a motion, I will ask the court to allow discovery with respect to these issues. I trust that I will receive the requested information within the ten days you have demanded that we respond.

Shawn

From: Shawn Meador
Sent: Tuesday, March 03, 2020 4:01 PM
To: Pierre Hascheff
Subject: RE: Indemnity

Pierre

We will have to agree to disagree. I believe that under these circumstances, you have a fiduciary duty to Lynda. I believe that, as a fiduciary, you had an obligation to notify Lynda of the malpractice claim as soon as you became aware of it, and that she is entitled to participate in decisions that impact her financial well-being. I do think she has been harmed by your decision to keep the claim secret from her for so long. How did doing so protect her? I am hopeful that any judge would have serious reservations about that decision. As a judicial officer, I believe the court should hold you to a strict fiduciary duty to Lynda in all of your dealings regarding litigation that impacts her, and I hope, give her the benefit of the doubt on these issues.

I do not believe Lynda is obligated to simply sit back, let you handle the claim in any manner you believe is in your best interests, and then simply pay you whatever you demand she owes you. Nothing in the language of the MSA gives you this authority and control over decisions that impact both of you.

I believe Lynda is entitled to full and complete transparency. I do not believe you have a viable attorney/client privilege claim. NRS 49.115(5). Furthermore, in your discussions with lawyers about the malpractice claim, you are necessarily doing so as her agent and fiduciary if you expect her to pay half the bill, and, thus, I do not believe the law allows you to keep secrets from her. As a fiduciary, how do you protect her interests by hiding the facts from her?

As I previously stated, I do not believe that she is responsible for your costs and fees in the underlying probate proceeding in which you were a percipient witness. Nor do I believe such fees fall within the language your lawyer drafted.

Lynda is prepared to honor her obligation to pay her share of the costs and fees incurred in the malpractice action that have not been covered by insurance. I do not have sufficient information on which to evaluate what she does or does not owe you at this time because you have objected to providing that information. Upon receipt of the requested documents and other information, I will evaluate your demands with Lynda and she will pay what she owes under the agreement your lawyer drafted.

If, instead, you chose to litigate, Lynda will ask the Court to require you to provide the information we have requested and will seek the fees and costs Lynda incurs in such litigation. While she would prefer to resolve this issue without the need for litigation, she is prepared to seek the court's protection if necessary. My gut reaction is that the court would not look on your positions favorably.

If you have any legal authority you believe demonstrates that I am mistaken in the legal positions I have outlined above, I am happy to review and evaluate your authorities with Lynda.

Shawn

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EXHIBIT 5

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador <smeador@woodburnandwedge.com>
Cc: Todd@ToddIrtorvinenlaw.com
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you.

In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRCP 16.21 This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days Sent from my iPad

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Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 6

From: Shawn Meador
Sent: Monday, April 20, 2020 1:03 PM
To: Todd@Toddltorvinenlaw.com; tra@lge.net
Cc: Kelly C. Albright
Subject: RE: Indemnity

Counsel

As you know, under ethical rules, I am not permitted to communicate with another party who I know to be represented by counsel. In prior communications, Judge Hascheff projected that he was acting as his own counsel and had not retained counsel in connection with his indemnity claim. He has now indicated that he has retained Mr. Torvinen in connection with that claim, and therefore, I will not respond directly to his email of today.

I would note that Judge Hascheff takes inherently contradictory positions. He insists that his potential liability for malpractice is a joint or community obligation for which his former wife is equally responsible and that she must pay half of Mr. Alexander's fees, while, at the same time, insisting that Mr. Alexander represents him alone and that he has an attorney client privilege with Mr. Alexander that prevents my client from having basic information in connection with Mr. Alexander's work and his communications with Mr. Alexander about the very claim he insists my client is responsible for.

If, as Judge Hascheff contends, the potential malpractice obligation is a joint or community obligation for which my client is equally responsible, several things flow from that contention. First, if it is a joint or community obligation, Mr. Alexander's professional obligations, and fiduciary duties, necessarily flow to Judge Hascheff and to his former wife jointly. If it is a joint or community obligation, as Judge Hascheff insists, my client's rights and interests are present, existing and equal to Judge Hascheff's rights and interests. In my opinion, there could be no attorney client privilege against my client under these circumstances.

If, as Judge Hascheff, contends, the potential malpractice obligation is a joint or community obligation, my client had a right to know about the claim as soon as Judge Hascheff was aware of it and had an equal and equivalent right to participate in management of the litigation. If Judge Hascheff insists that Mr. Alexander represents him alone, then my client had then, and now has, the right to her own representation in connection with the claim. If she must retain her own counsel because Mr. Alexander represents Judge Hascheff alone and his duties run solely to Judge Hascheff, then Judge Hascheff would be equally responsible for the fees my client is forced to incur to protect herself. They either have joint fees and representation or they each need and must pay separate legal fees for separate representation. Judge Hascheff election to keep the potential claim a secret from my client and then unilaterally determine the manner in which he would handle it, he did so, in my opinion, necessarily, with a fiduciary duty to my client. His choice not to notify her of the claim necessarily precluded her from obtaining her own counsel and protecting herself, thus, reinforcing Judge Hascheff's fiduciary duty to her. He is either acting to protect her interests or not. If he is, he has a fiduciary duty in connection with those efforts.

Nothing in the language of the divorce settlement supports a claim that my client is responsible for fees that Judge Hascheff incurred as a percipient witness. If Judge Hascheff believed that it was strategically valuable for him to have counsel defend him in that role and wanted those fees to be included within the indemnification language, he should have consulted with my client to determine if she agreed that approach was appropriate and in the community's best interests. He made a decision that he believed were in his own best interest without consulting her but now apparently demands that she pay half of the fees arising out of his unilateral decision.

I have previously outlined the information I need to review in order to provide my client with thoughtful and informed advice. Judge Hascheff's insistence that my client must simply accept his demands and that she is not entitled to basic and fundamental information about the very fees he insists she must share, is not supported by the law or common sense. Upon receipt of the information I have requested I will be happy to review and evaluate Judge Hascheff's claims and demands in good faith and will respond promptly.

At this time, I need to know if Mr. Alexander takes the position that his duties flow solely to Judge Hascheff or if his position is that he has an equal and identical obligation and duties to my client in connection with this claim so that my client can make thoughtful decisions about how to protect her rights and interests. Can she rely on Mr. Alexander to protect her interests or should she assume that his role is to protect Judge Hascheff's interests? I need to know if Mr. Alexander shares Judge Hascheff's contention that their communications are protected by an attorney client privilege and if their thought processes in connection with legal strategy are protected by an attorney client or work product privilege as against my client who is being asked to pay half of Mr. Alexander's bill.

I continue to look forward to receipt of the information I have previously requested so that I can give my client appropriate advice. If Judge Hascheff determines that it is in his best interest to initiate litigation against my client, I will, necessarily, be forced to raise these same issues with the court and will request discovery to obtain the information I have requested.

In the meantime, if you have any questions or concerns, please do not hesitate to contact me

Shawn

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EXHIBIT 7

**THE LAW OFFICE OF
TODD L. TORVINEN**

CHARTERED

232 COURT STREET RENO, NEVADA 89501
PHONE: (775) 825-6066 FAX: (775) 324-6063
E-MAIL: todd@toddtorvinenlaw.com

Certified Public Accountant (NV)
Certified Estate Planning Law Specialist (EPLS)

May 29, 2020

Via RCMS

Shawn B. Meador, Esq.
Woodburn and Wedge Attorneys
6100 Neil Rd., Suite 500
Reno, NV 89511

Re: Hascheff MSA Indemnity Clause

Dear Mr. Meador:

I write on behalf of my client, Judge Hascheff. Enclosed please find the redacted billing statements from Todd Alexander, Esq., who represents Judge Hascheff regarding the malpractice action. Judge Hascheff previously provided these billing statements to Lucy Mason, Lynda Hascheff's sister. Also enclosed please find Mr. Alexander's Declaration dated April 10, 2020, generally explaining the need for counsel given the real threat and close in time filed malpractice action. The Declaration also describes the significant legal services required in light of the gravity of the threat and the malpractice action.

It is my understanding that on February 5, 2020, Mr. Hascheff emailed your client's sister, Lucy Mason (also an attorney) the: (1) canceled checks for the payment of attorney fees related to the malpractice action, (2) the endorsement number showing malpractice tail coverage, (3), the actual policy and the tail coverage, (4) correspondence between him and the carrier's adjuster, (5) the Hascheff Marital Settlement Agreement, and (6) the 40 page subpoena demanding production of estate planning documents and other documents related to his estate planning advice. I also understand that at or near the same time in early February, Mr. Hascheff emailed Lucy Mason a copy of the malpractice complaint against him filed on December 26, 2018. I further understand that you received those documents.

Judge Hascheff forwarded his email to you dated March 1, 2020, invoking the 10-day notice and the required information triggering liability for attorney fees incurred for enforcement pursuant to Section 35.2 of the MARITAL SETTLEMENT AGREEMENT dated September 1, 2013 ("MSA"). You are probably also aware that MSA Section 40

Shawn Meador, Esq.
May 26, 2020
Page 2

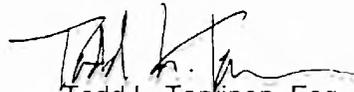
specifically requires your client to indemnify Mr. Hascheff for "one half (1/2) the costs of any defense and judgment" relating to a malpractice action.

In the March 1, 2020, email to you, Mr. Hascheff indicated as of that date, one half (1/2) of the attorney fees incurred related to the malpractice defense due from Lynda amounted to the sum of \$4675.90. Since March 11, 2020, Mr. Hascheff has incurred fees with my office related to enforcement of Section 40 which now total \$1687.50. As a result, under the terms of the MSA, your client owes the sum of \$6363.40 (\$4675.90 + \$1687.50) to Judge Hascheff. This does not include Mr. Alexander's fees and costs not yet billed in preparation of the Declaration and other time related to the malpractice action.

Hopefully, your client has interest in resolving this matter now. Judge Hascheff is willing to accept payments of \$1500 per month commencing June 15, 2020, until fully paid. Note that Judge Hascheff is also willing to waive interest accrual on the balance due to which he is entitled under NRS 99.040 as an accommodation to your client if your client accepts the terms described above.

Judge Hascheff requests your client's response to me within 10 days of the date of this letter. If necessary, Judge Hascheff will seek enforcement of the MSA indemnity provision thereafter. Thank you for your professionalism and your courtesy in advance.

Respectfully,



Todd L. Torvinen, Esq.

Enclosures

Note: This writing contains an offer in compromise under NRS 48.105. As a result, it may not later be used as prohibited specifically by NRS 48.105.

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2020-06-16 02:53:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 8



June 2, 2020

VIA Email & Regular USPS Mail

todd@toddlorvinenlaw.com

Law Office of Todd L. Torvinen
Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: Hascheff MSA/Fiduciary Duties

Dear Mr. Torvinen:

I am in receipt of your letter of May 29, 2020, in which you repeat the demands Judge Hascheff's previously made. Unfortunately, from my perspective, you elected not to address the issues and concerns raised in my email of April 20, 2020.

I would note that Mr. Alexander did address some of my concerns indirectly in his Declaration dated April 10, 2020, which you included in your letter of May 29, 2020. Given that Mr. Alexander's declaration was signed ten days prior to my email, it was clearly not written to address the concerns raised in my April 20, 2020, email and projects that all of the fees my client has incurred in attempting to obtain basic information to allow her to make thoughtful decisions was just a waste of time and money and that Judge Hascheff was simply trying to create evidence for future motion practice.

In his declaration, however, Mr. Alexander unequivocally states that he represents Judge Hascheff and that his professional duty runs solely to Judge Hascheff. He asserts that there is an attorney client privilege between him and Judge Hascheff that shields him from disclosing information to my client, such as discussions he had with Judge Hascheff about his risk of liability. At the same time, however, you insist that Ms. Hascheff must pay half of his bill for those discussions and his advice. Mr. Alexander, in fact, incredibly suggests that his election to involve himself in the dispute between our clients regarding the Marital Settlement Agreement and Decree of Divorce is, in some way, related to the defense of the malpractice action. While I disagree, it reflects that Ms. Hascheff may not rely on Mr. Alexander to protect her interests in connection with the malpractice litigation, but instead will need her own lawyer.

Judge Hascheff insists that any liability arising out of the malpractice claim is a joint or community debt for which Ms. Hascheff is equally responsible. I am unaware of any legal theory or basis on which Judge Hascheff could claim that he has the unilateral right to make all litigation decisions regarding this alleged joint or community obligation. Similarly, I am



unaware of any authority that would support his claim that he may keep the facts and legal advice he received, on which he based his litigation decisions, a secret from Ms. Hascheff, but that Ms. Hascheff must pay half of this legal fees for obtaining the advice. If you are aware of such authority, I would be more than happy to review and evaluate the authority you cite.

This is particularly troubling in light of the opinions asserted in paragraphs 3, 4, 5, 6, 7 and 8 of Mr. Alexander's Declaration. What specific facts support his sworn conclusions that Judge Hascheff was clearly at risk of substantial, potentially multimillion-dollar damage award? Judge Hascheff is only clearly at risk of such damages if there are facts that suggest he breached his professional obligation and failed to exercise the requisite standard of care, and as a result a person to whom he owed professional duties was proximately harmed by his breach of duty. Is Mr. Alexander suggesting that such facts exist?

I would also note that the malpractice complaint alleges (I obviously have no knowledge if allegations are accurate) that Pierre represented Todd Jaksick individually and as trustee and beneficiary of his father's trust, that he represented Sam Jaksick, perhaps the trust itself and Todd's family trust. The potential conflicts of interest jump off the page. Did Judge Hascheff obtain written conflict waivers?

Ms. Hascheff cannot possibly evaluate whether Judge Hascheff's decision to retain counsel to represent him in connection with collateral litigation was "prudent" and in her best interest without knowing the facts and risks. In breach of his fiduciary duty, Judge Hascheff did not afford her the courtesy of providing her with this information. Rather, he unilaterally made all decisions and then sent her a bill, while insisting he had every right to keep everything secret from her. He did so for at least a year and potentially much longer.

I would note that the malpractice insurance company has determined that it is appropriate to spend up to \$2,500 in responding to subpoenas such as those at issue here. The insurance company has paid that sum. The insurance company clearly does not believe that all of these expenses that Judge Hascheff demands that my client pay, that are related to the subpoena, deposition and trial testimony, are "claim expenses" related to the malpractice claim. If the insurance company, whose business it is to address what conduct is necessary in connection with a potential malpractice claim, believes that \$2,500 is reasonable, I would rely more heavily on that decision than I would on secret decision-making between Judge Hascheff and his counsel.

Ms. Hascheff remains prepared to pay her one-half of the total fees and expenses related to the malpractice action. From my review of the bills provided by Mr. Alexander, the only fees I can see that are directly related to the malpractice action come to \$95. I appreciate, although disagree with, your claim that my client is responsible for any fees and costs Judge Hascheff elects to incur that he deems to be prudent in connection with collateral lawsuits. However, I need to know what the fees and costs have been that are directly related to the malpractice action, so that Ms. Hascheff can pay her share of the undisputed fees and costs.



I would note that under the insurance policy, there is a \$10,000 retention. The limit of my client's obligation, therefore, would be \$5,000, unless there is ultimately a judgment in excess of policy limits. And yet, Judge Hascheff's position would potentially result in my client having a legal obligation well in excess of that \$5,000. That excess exposure, according to his position, is entirely within his control, based on decisions he unilaterally makes based on facts and legal advice that he insists he can keep secret from my client. Again, if you have authority in support of this extraordinary position, I am more than happy to review and evaluate that authority with my client.

In addition, Judge Hascheff deemed it necessary and prudent to have counsel in connection with his role as a percipient witness and with respect to legal advice about how best to approach the malpractice claim and litigation. He is well experienced lawyer. My client is not a lawyer and has no legal training. Her interests in obtaining legal advice are greater than, not less than Judge Hascheff's. Judge Hascheff's counsel has made it clear that his duty is to Judge Hascheff and that his discussions and the advice he gave Judge Hascheff is confidential. Thus, it is, necessarily, of no value to my client.

If she is responsible for the legal fees Judge Hascheff incurs to obtain such advice, he is, necessarily, equally responsible for fees that she incurs in connection with these matters. To date, she has incurred approximately \$5,600 in fees simply to try to obtain the basic information we have repeatedly requested. Any claim Judge Hascheff has should, therefore, be offset by one-half of her fees.

Thus, while it appears entirely possible that we may have to litigate the parties' respective rights and obligations under the language of the MSA you drafted, we do not have to litigate the issue of the fees directly related to the malpractice action as opposed to the fees your client made a strategic decision to incur as a percipient witness in a collateral lawsuit.

If litigation becomes necessary, I will, among other things, request that the Court allow me to conduct discovery with respect to when Mr. Hascheff knew or should have known of the facts on which the underlying malpractice claim is premised. The complaint in the malpractice action reflects that Judge Hascheff's attorney client relationship with the plaintiffs ended before the MSA was signed and Decree entered. The potential conflict issues noted above necessarily existed at the time the work was done. The discovery, necessarily, will focus on whether Judge Hascheff knew or should have known there was a potential risk of a malpractice claim that he did not disclose contrary to paragraph 29 of the MSA.

Should Judge Hascheff decide that finding resolution makes more sense than litigation, I might suggest that his demands on my client be stayed until the malpractice action is finally resolved and the total sums in dispute can be identified. If he believes that litigation of the issue noted above are in his best interest, so be it, my client is prepared to defend herself and seek to recover the legal fees she has and will incur.

Todd Torvinen, Esq.
June 2, 2020
Page 4



Pursuant to paragraph 35.2 of the parties' MSA, if we have not been able to reach an agreement within ten days of the date of this letter my client will file a declaratory relief action so that the court can determine my client's liability under these facts. To assure there is no confusion, my client's position is that she is responsible for one-half of the fees and costs associated with the malpractice action, that she is not responsible for Judge Hascheff's fees and costs as a percipient witness and that if Judge Hascheff knew or should have known the facts on which the malpractice claim was premised, this part of their MSA was obtained by fraud. If you have any questions please do not hesitate to ask.

Sincerely,

Dictated but not read

Shawn B Meador, Esq.

Cc: L. Hascheff

FILED
Electronically
DV13-00656
2020-06-16 02:53:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 9



June 11, 2020

VIA EMAIL & REGULAR USPS MAIL

todd@toddltorvinenlaw.com

Law Office of Todd L. Torvinen
Todd Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: Hascheff

Dear Mr. Torvinen:

To assure the accuracy of our motion, I need the following information and documents:

1. To know the current status of the malpractice action;
2. To know the current status of the underlying lawsuit among the Jacsick siblings;
3. A copy of the "multi-page subpoena" referenced in paragraph 2 of Mr. Alexander's declaration that allowed him to speculate that the subpoena could lead to a malpractice action, given that there could only be a meaningful risk of malpractice liability if documents in the file reflected that the work Judge Hascheff did or the advice he gave was in breach of his professional obligations and duties to his clients – if those documents showed he did nothing wrong there would be no basis for such an opinion;
4. To know what documents or other information sought by that subpoena were such that they clearly reflected that they were attempting to undermine "his estate plan and advice which could lead to a malpractice action" as set forth in paragraph 3 of Mr. Alexander's declaration;
5. What facts, circumstances, and written documents led Mr. Alexander to conclude that Judge Hascheff was at risk of a multi-million dollar claim against him;
6. Whether Mr. Alexander still opines that Judge Hascheff is at risk of a multi-million dollar judgement in excess of policy limits.



7. Copies of the written conflict waivers that Judge Hascheff obtained when he was, at least according to the malpractice complaint, simultaneously representing multiple clients with potentially conflicting interests.

Sincerely,

Dictated not read

Shawn B Meador, Esq.

1 CODE: 2645
2 Todd L. Torvinen, Esq.
3 Nevada Bar No. 3175
4 232 Court Street
5 Reno, NV 89501
6 (775) 825-6066

7
8 IN THE FAMILY DIVISION OF
9 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF WASHOE

11 PIERRE A. HASCHEFF,
12
13 Plaintiff,

Case No: DV13-00656

14 -vs-

Dept. No: 12

15 LYNDA L. HASCHEFF,
16
17 Defendant.

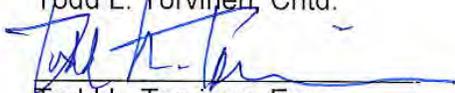
18
19 **OPPOSITION TO MOTION FOR CLARIFICATION OR DECLARATORY RELIEF**
20 **REGARDING TERMS OF MSA AND DECREE**

21 COMES NOW, Plaintiff, Pierre A. Hascheff by and through his attorney, Todd L.
22 Torvinen, Esq., and hereby files this OPPOSITION TO MOTION FOR
23 CLARIFICATION OR DECLARATORY RELIEF REGARDING TERMS OF MSA AND
24 DECREE.

25 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
26 affirm that the preceding document does not contain the social security number of any
27 person.

28 Dated: July 6, 2020.

The Law Office of
Todd L. Torvinen, Chtd.


Todd L. Torvinen, Esq.

1 **OPPOSITION POINTS AND AUTHORITIES**

2 ***1. Background and Procedure.***

3 On June 16, 2020, Lynda Hascheff ("Ms. Hascheff") through counsel filed a
4 Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree
5 ("Motion"). Ms. Hascheff's Motion refers to the marital settlement agreement ("MSA")
6 between the parties dated September 1, 2013, incorporated into the parties' Decree of
7 Divorce entered November 15, 2013.

8 Judge Hascheff's counsel asserts no objection to this Court interpreting section
9 40 of the MSA in part because the interpretation is a question of law for this court and
10 that the language is clear and unambiguous; and because Judge Hascheff
11 concurrently files with this Opposition his Motion for Order to Show Cause, or in the
12 Alternative, to Enforce the Court's Orders.

13 Unfortunately, Ms. Hascheff's Motion includes assertions of fact at variance with
14 the actual events of the malpractice action and the largely documented
15 communications between the parties. Also, unfortunately, the Motion contains patently
16 incorrect averments of law.

17 Judge Hascheff believes this Opposition will inform the Court as to the true
18 facts. The Motion needlessly repeats several arguments but in essence there are 6
19 primary objections: (1) the interpretation of the MSA's contractual indemnity, (2) that
20 Judge Hascheff's request for his costs incurred were misleading and false, (3) that
21 Judge Hascheff refused to provide information requested by Ms. Hascheff, (4) that
22 Judge Hascheff failed to disclose necessary information to Ms. Hascheff, (5) that the
23 malpractice action is a community obligation and an obligation giving rise to fiduciary
24 duties, and (6) that Judge Hascheff took advantage of Ms. Hascheff in negotiating the
25 MSA. This Opposition addresses each of these issues below.

26 ///

27 ///

28 ///

1 **2. Contractual indemnity.**

2 For the Court's ease and convenience, the indemnity clause, page 12, Section
3 40 is electronically reproduced:

4 **Indemnity and Hold Harmless**

5
6 40. Except for the obligations contained in or expressly arising out of this Agreement, each
7 party warrants to the other that he or she has not incurred, and shall not incur, any liability or
8 obligation for which the other party is, or may be, liable. Except as may be expressly provided
9 in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be
10 brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission
11 of the other, the warranting party shall, at his or her sole expense, defend the other against the
12 claim, action, or proceeding. The warranting party shall also indemnify the other and hold him
or her harmless against any loss or liability that he or she may incur as a result of the claim,
action, or proceeding, including attorney fees, costs, and expenses incurred in defending or
responding to any such action. In the event Husband is sued for malpractice, Wife agrees to
defend and indemnify Husband for one half (1/2) the costs of any defense and judgment
Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

13 Under Nevada law, the court must enforce an agreement as written when it is
14 clear as to its terms, and the court does not have authority to deviate from the written
15 terms of the agreement; see *Canfora v. Coast Hotels and Casinos, Inc.*, 121 Nev. 771,
16 121 P.3d 599 (2005) (when a contract is clear on its face, it will be construed from the
17 written language and enforced as written, and the court has no authority to alter the
18 terms of an unambiguous contract). The court is required to enforce the parties' intent
19 and the terms of the agreement; see *State ex rel. Masto v. Second Judicial Dist. Court*
20 *ex rel. County of Washoe*, 125 Nev. 37, 199 P.3d 828 (2009) (when interpreting a
21 contract, the court construes a contract that is clear on its face from the written
22 language, and it should be enforced as written). The court makes its
23 own independent judgment when interpreting the contract; see *Sheehan & Sheehan v.*
24 *Nelson Malley and Co.*, 121 Nev. 481, 117 P.3d 219 (2005) (interpretation of a
25 contractual term is a question of law, and the court shall effectuate the intent of the
26 parties when the terms are clear).

27 A party to a written contract accepts the contract and is bound by the
28 stipulations and conditions expressed in the contract whether he reads them or not,

1 and ignorance through negligence or inexcusable trustfulness will not relieve a party
2 from his contract obligations; *Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838,
3 477 P.2d 870 (1970) (a contracting party is conclusively presumed to know its
4 contents and to consent to them, and there can be no evidence for the jury as to her
5 understanding of its terms).

6 Ms. Hascheff asserts that her MSA obligation only reimburses fees and costs
7 incurred to defend the malpractice action but not fees Judge Hascheff incurred as a
8 percipient witness. Accordingly, she argues that her obligation for fees and costs arose
9 only after the filing of the malpractice action. See Motion, p. 9, lines 11-13; p. 12, lines
10 15-16. As such, she further asserts no obligation under the indemnity to pay for his
11 decision to retain an attorney to protect his personal interests.

12 Additionally, she asserts that Section 40 includes warranties applicable to
13 Judge Hascheff as he should have known that there may be a pending claim; and
14 therefore he breached the MSA for failing to disclose a potential malpractice action
15 that was filed more than 5 years after the MSA was executed. Ms. Hascheff also
16 argues that Judge Hascheff had no need to engage a lawyer to represent him; and he
17 could have and should have testified in the underlying trust litigation sans counsel
18 even though such litigation substantially questioned the advice he provided to Samuel
19 Jaksick allegedly depriving certain of the Jaksick children of their share of the estate
20 (trust) after the death of Samuel Jaksick.

21 Clearly, the last sentence of Section 40 must be read in conjunction with the
22 entire Section. Ms. Hascheff apparently agrees with said interpretation see Motion p.
23 10, lines 23-25; p. 11, lines 1-2 and p. 12, lines 6-7. Section 40 unambiguously
24 indicates that if any claim, action, or proceeding, whether or not well-founded shall
25 later be brought seeking to hold one party liable on account of any alleged debt,
26 liability, act, or omission the other party at his or her sole expense must defend the
27 other against said claim, action or proceeding. It also provides that in addition to this
28 defense obligation, the party must also indemnify the other and hold him or her

1 harmless against any loss or liability that he or she may incur as a result of the claim,
2 action or proceeding including attorney's fees, costs and expenses incurred in
3 defending or responding to such action. As a subset and part of that all-encompassing
4 language providing a full defense and complete unconditional indemnification a
5 provision was added that in the event said claim, action or proceeding, involved a
6 malpractice action whether or not well-founded, it obligated the other party to pay only
7 one-half (1/2) the defense costs and indemnify only one-half (1/2) of any judgment if
8 any, entered against said party.

9 Without this provision it would be unfair for Ms. Hascheff to pay for 100% of the
10 defense and 100% of any judgment entered against Judge Hascheff. She should only
11 be responsible for one half. The other reason this provision also involves fairness, as it
12 would be unfair and inequitable for the parties to equally divide the community estate
13 largely created through Judge Hascheff's law practice yet post-divorce only Judge
14 Hascheff's one half (1/2) would bear the entire risk from a malpractice action from legal
15 services rendered during the marriage. Hypothetically, a successful malpractice action
16 would simply wipe out one party's assets and inequitably leave the other party
17 untouched.

18 Unfortunately, Ms. Hascheff's counsel failed to comprehend the basic
19 mechanics of an obligation to defend and indemnify under a contractual indemnity
20 agreement. Contractual indemnity arises pursuant to a contract provision, where
21 parties agree that one party will reimburse the other party for liability resulting from the
22 former's work. See *Rayburn Lawn and Landscape Designers, Inc.* 127 Nev. 331, 255
23 P3d268 (2011). Further, when a duty to indemnify arises contractually it is enforced in
24 accordance with its terms and is **not** subject to equitable considerations. See *Rayburn*
25 *Lawn and Landscape Designer Inc.* id; and *United Rentals Highway TAC v. Wells*
26 *Cargo*, 128 Nev. 666, 289 P.3d 221 (2012) (when a duty to indemnify arises from a
27 contract it is not subject to equitable considerations, rather it is enforced in accordance
28 with the terms of the contracting parties agreement and intent).

1 It should also be noted that when an indemnity clause also imposes a duty to
2 defend that duty is broader than the duty to indemnify because it covers not just claims
3 under which the indemnitee is liable but also claims under which the indemnitee could
4 be found liable. *MT builders LLC v. Fisher Roofing, Inc.* 219 Ariz. 297 197 P.3d 758
5 (2008) (private indemnity clauses, like those in an insurance agreement, require the
6 insurance company to defend all claims against the insured regardless of the claims
7 merits). When a lawyer is sued for malpractice and the former client alleges
8 negligence in professional services, such clauses by definition require the indemnitor
9 to indemnify the indemnitee attorney and pay defense costs whether or not the
10 attorney is found to be negligent.

11 Because the courts will not entertain equitable considerations, Ms. Hascheff's
12 claims of breach of fiduciary duty and breach of the implied covenant of good faith are
13 not considered.¹ Unlike equitable indemnification which does not apply here,
14 contractual indemnity is enforced in accordance by its terms. See *United Rentals*, *id.*
15 The clear terms of this indemnity require Ms. Hascheff to pay one-half of the defense
16 costs at a minimum. There is no judgment against Judge Hascheff at this time
17 because the malpractice litigation is ongoing, as is the underlying trust litigation. See
18 below for the discussion of the courts dismissing claims of breach of the implied
19 covenants of good faith and fair dealing and breach of fiduciary duty when the
20 indemnitee enforces contractual indemnity against the indemnitor.

21 Ms. Hascheff impracticality argues that Judge Hascheff did not need to retain
22 counsel and he could have testified in the underlying litigation without an attorney.
23 Asserting that Judge Hascheff should have foolishly proceeded without counsel during
24 the depositions and a trial in the underlying trust action means that Judge Hascheff

25
26 ¹ Ms. Hascheff cites *Williams v. Waldman*, 108 Nev. 466, 836 P.2d 614,619 (Nev. 1992) re fiduciary
27 duty. However, *Williams* is inapplicable where the nonlawyer spouse has independent counsel. See
28 also *Cook v. Cook*, 912 P.2d 264, 112 Nev. 179 (Nev. 1996) (independent and competent counsel
required for nonlawyer spouse). Strangely, since opposing counsel represented Ms. Hascheff in the
divorce matter, *Williams* and *Cook* only apply if opposing counsel concedes his representation of Ms.
Hascheff in the divorce and negotiation of the MSA were otherwise.

1 would be defenseless without counsel to object to improper questioning, protect
2 against eliciting inadmissible evidence and raise other legitimate legal objections to
3 protect his interest and Ms. Hascheff's interest(s). After all, their interests align
4 because without a lawyer, Judge Hascheff exposes both himself and Ms. Hascheff to
5 extreme risk of increasing the probability of a malpractice judgement liability against
6 both against him and her. It was critical to defend the claims in the trust action as they
7 likely become res judicata and collateral estoppel defenses in the malpractice action
8 and eliminate Ms. Hascheff being required to pay one-half of the likely much higher
9 defense costs and the judgment. Judge Hascheff's need to engage counsel to early
10 address and cut off any possible claims arising out of or determined in the underlying
11 litigation should not be subject to question under the circumstances.

12 Ms. Hascheff also argues that any costs incurred by Judge Hascheff to enforce
13 the indemnity are not reimbursable. She argues she is only responsible for the fees
14 incurred in the malpractice action. The contrary is true. The basis for indemnity is
15 restitution that is one person is unjustly enriched when another discharges the liability
16 that should be his or her responsibility pursuant to the contract. It is just and fair that
17 the indemnitor should bear the loss rather than shifting it entirely to the indemnitee or
18 dividing it proportionately between the parties by contribution. See *Piedmont*
19 *Equipment Co., Inc. v. Eberhard, MFG. Co.* 99 Nev. 523 665 P. 2D 256 (1983). (An
20 indemnitee is not held harmless pursuant to an express or implied indemnity
21 agreement if the indemnitee must incur costs and attorney's fees to vindicate their
22 rights).

23 Therefore, the fees incurred by Todd Alexander in preparing his affidavit
24 justifying Judge Hascheff's retention of insurance defense counsel was prudent and
25 prepared in direct response to Ms. Hascheff's allegations that Mr. Alexander's
26 engagement was unnecessary and not covered by the indemnity. Mr. Alexander and
27 counsel's fees would therefore be reimbursable not only under the indemnity case law
28 but also Section 40 of the MSA. See Exhibit 1, Mr. Alexander's declaration.

1 Consistent with an equal division of property and liabilities, Section 40 modified
2 the all-inclusive indemnity to limit Ms. Hascheff's exposure to only one half (1/2) of the
3 cost of any defense and judgment. Otherwise, Section 40 could be interpreted to
4 require her to pay the whole amount which was not appropriate since each party
5 received 50% of the marital estate.

6 The concrete proof that the potential malpractice threat disclosed by the
7 depositions and trial testimony from the underlying trust action sounded principally and
8 substantially in malpractice comes from malpractice defense counsel's redacted billing
9 records previously produced to Ms. Hascheff.

10

11 **LEMONS, GRUNDY & EISENBERG**
12 **6005 Plumas Street, Third Floor**
13 **Reno, Nevada 89519-6000**
14 **(775) 786-6868**
15 **Tax I.D. #88-0122938**

16 Allied World
17 **BILL THROUGH SERENGETI**

18 **ATTN: Andy Kenney**

19 Hascheff, Pierre re: Allied World
20 2018018714

21 **Page: 1**
22 **08/27/2019**
23 **OUR ACCOUNT NO: 52-8603M**
24 **STATEMENT NO. 8**

	PREVIOUS BALANCE	\$11,851.80
03/25/2019	Payment - Thank you Allied World	-1,300.00
03/25/2019	Payment - Thank you Allied World	-150.00
04/08/2019	Payment - Thank you PAH Limited LLC	-1,000.00
04/16/2019	Payment - Thank you Allied World	-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC	-1,000.00
	TOTAL PAYMENTS	-4,500.00
	BALANCE DUE	\$7,351.80

25 **\$2500**

26 Generally, the terms of Judge Hascheff's malpractice tail policy require him to
27 pay the first \$10,000 of fees and costs, and then the insurance company, Allied World
28 pays the rest. Nevertheless, the fact that the insurance company picked up the
defense and paid defense fees in the trust litigation of \$2500, although not required
under the policy, conclusively shows that Judge Hascheff's involvement in the
underlying trust case primarily involved potential malpractice claims. See also
Declaration of Judge Hascheff attached.

1 **3. Ms. Hascheff's fiduciary duty claims**

2 With respect to Judge Hascheff's breach of a fiduciary duty and the implied
3 covenant of good faith and fair dealing, such claims have routinely been denied in
4 contractual indemnification claims. See *Rayburn Lawn and Landscape Designers*
5 *supra*, *United Rentals Highway* *supra*. Indeed, a fiduciary duty jury instruction is
6 considered both erroneous and prejudicial with regard to litigation between and
7 indemnitee and indemnitor. See *Insurance Co. of the West v. Gibson Tile Co.*, 122
8 Nev. 455, 134 P.3d (2006).

9 Similarly, although every contract contains an implied covenant of good faith
10 and fair dealing, an action in tort for breach of the covenant arises only in rare and
11 exceptional cases when there is a special relationship between the victim and
12 tortfeasor which is characterized by elements of public interest, adhesion and fiduciary
13 responsibility. See *Kmart Corp. v. Ponsock*, 103 Nev. 39, 49, 732P. 2nd 1364, 1370
14 (1987) (abrogated on other grounds).

15 Examples of special relationships include those between insurers and insureds,
16 partners and partnerships and franchise agreements. See *Insurance Co. of the West*
17 *v. Gibson Tile Co., Inc.*, *supra* (fiduciary duty instruction not appropriate when
18 indemnitee brought indemnity action against the indemnitor). Although this case
19 involved a surety relationship the court clearly stated that the indemnitee had a right to
20 pursue its indemnification claim under the plain terms of the indemnity contract for
21 costs incurred in defending the action brought against it on the bond by the suppliers
22 regardless of whether any payment was ultimately made by the surety under the bond.
23 See also *Harvey v. United Pacific Ins. Co.*, 109 Nev. 621 856 P.2d 240 (1993)
24 (indemnitee's claims of bad faith, breach of fiduciary duty, breach of the implied
25 covenant of good faith and fair dealing and other claims were found to have no merit).
26 In that case the indemnity contract provided for the payment all of the plaintiff's costs
27 and attorney's fees incurred by the plaintiff in enforcing its rights under the indemnity
28 agreement against the indemnitor.

1 Ms. Hascheff's argument that when an indemnitee exercises a contractual right
2 of indemnity and triggers the indemnitor's duty to defend, it entitles her to assert
3 equitable defenses of fiduciary duty, breach of implied covenant of good faith and fair
4 dealing is not consistent with law of this State and other jurisdictions. Her argument
5 plainly leads to a nonsensical conclusion that whenever a party to a purchase
6 agreement, a lease or other contract exercises the right to indemnity and defense, it
7 creates a fiduciary duty and implied covenants simply by exercising their contractual
8 right. Further, an indemnitor and indemnitee by definition are adverse with "no special
9 relationship" only a contractual relationship and no implied covenant of good faith. See
10 *Insurance Co. of the West v. Gibson Tile Co., Inc.*, supra.

11 It is not uncommon for an indemnitee to remain involved for several years in
12 the underlying litigation and then once litigation is concluded and the damages are
13 ascertained; then and only then will the indemnitee notify the indemnitor for of the
14 obligation to pay said damages. Therefore, Judge Hascheff did not breach his fiduciary
15 duty, if any, by waiting to inform her of the malpractice action until after the jury
16 decided the legal claims in the underlying trust litigation. It should also be noted many
17 indemnity agreements include notice provisions but this one did not.

18 Finally, Ms. Hascheff argues that because this is a community debt that judge
19 Hascheff owes her some sort of fiduciary obligation. By definition, an indemnitee and
20 indemnitor are adverse parties since one party must pay part or all of an obligation or
21 costs paid or incurred by the other party. This indemnity obligation is also not a
22 community debt as no community property exists. Once the divorce was final the
23 community property became separate property of each spouse. Both spouses agreed
24 under the indemnity provision that his or her post-divorce separate property would be
25 pledged in the event a potential claim existed alleging malpractice whether the claim
26 had merit or not. To argue that the claim for indemnity is a community property
27 obligation with resulting fiduciary duties is simply not legally correct. See NRS
28 125.150.1 (equal division and distribution of community property), and NRS 125.150.3

1 (3-year statute of limitations from divorce for motion to divide community property
2 omitted through fraud or by mutual mistake). Here, the parties obtained their divorce
3 decree more than 7 years ago.

4
5 **4. Ms. Hascheff falsely alleges failure to disclose critical information to Ms.
6 Hascheff.**

7 Oposing counsel argues that Judge Hascheff failed to notify Ms. Hascheff of
8 the subpoena he received on or about July 2018; that he failed to disclose that a
9 complaint for malpractice was filed against him on December 26, 2018; and that he
10 intentionally withheld both events secret from Ms. Hascheff. Ms. Hascheff then argues
11 that Judge Hascheff therefore had a fiduciary duty to notify her of a potential claim and
12 the risk of her liability under the indemnification agreement. She also asserts that her
13 consent was a condition precedent to Judge Hascheff incurring any legal expenses so
14 she could decide whether or not to share in those costs; and with such knowledge she
15 could have protected herself in some fashion. Based on these assertions, she
16 conclusively determines that judge Hascheff breached a fiduciary duty to her and
17 breach the implied covenant of good faith and fair dealing and therefore equitable
18 estoppel applies and prevents Judge Hascheff from proceeding under the indemnity
19 agreement. This is not legally correct. See section 3 above.

20 First, Judge Hascheff did not keep the potential for a malpractice claim secret
21 from Ms. Hascheff. Judge Hascheff believed that the underlying trust action would be
22 resolved, and the malpractice action filed in December 2018 would eventually be
23 dismissed. See Judge Hascheff's affidavit attached.

24 The underlying trust litigation went to trial before a jury. The jury returned a
25 favorable verdict. The jury believed Judge Hascheff's testimony that the advice he
26 provided his client was legally sound and beneficial to his client. The jury also found
27 that he followed his client's wishes and did not intentionally or otherwise orchestrate
28 and execute an estate plan which deprived certain beneficiaries of their expected
share of their father's estate.

1 It is Judge Hascheff's understanding that there remain some pending equitable
2 claims in the underlying trust litigation to be decided by the trial judge. The underlying
3 litigation concerning the equitable claims remains pending and therefore the
4 malpractice action has been stayed until the disposition of the equitable claims. See
5 Judge Hascheff's Declaration attached.

6 Unfortunately, opposing counsel misunderstands the appropriate protocol in
7 filing a malpractice action. Typically, the client waits for resolution of the underlying
8 litigation and if the client is damaged by following his counsel's legal advice, the client
9 then possesses a potential claim for malpractice. Malpractice actions are generally not
10 asserted against the attorney first because the underlying litigation may result in the
11 client not incurring damages and not being harmed. See section 6 below.

12 Judge Hascheff had no choice but to wait and assist in the course and outcome
13 of the underlying action. He also had the right under the indemnity to wait until the
14 underlying action was concluded or substantially concluded before he made a claim
15 for indemnity.

16 There is nothing Ms. Hascheff could do to change the resolution of the
17 underlying trust action whether she knew at the outset or in January 2020. Hiring her
18 own counsel in the underlying trust action would have been factually and legally
19 nonsensical because her lawyer could only observe as her appearance and
20 involvement would not be relevant to the underlying trust action or the malpractice
21 action.

22 Indemnitors generally do not involve themselves in underlying litigation which
23 involves the indemnitee and the indemnitee is within his legal right to conclude the
24 litigation and determine actual losses prior to making a claim against the indemnitor.
25 See *Lund v. 8th Judicial District Court, Clark County* 127 Nev. 358, 255 P.3d 280
26 (2011) (defendant is permitted to defend the case and at the same time assert his right
27 of indemnity against the party ultimately responsible for the damage). Ms. Hascheff
28 cannot show that she faces substantial prejudice by receiving notice of the underlying

1 malpractice claim in January 2020, rather than earlier since the underlying legal claims
2 have been adjudicated in favor of Judge Hascheff substantially reducing the risk for
3 potential malpractice claims against him and a judgment against her.

4
5 ***5. Ms. Hascheff's allegation that Judge Hascheff's refused to provide
information justifying his claim.***

6 Ms. Hascheff argues that Judge Hascheff has refused to provide the
7 information requested so she could determine whether she should share the costs
8 required under the indemnity agreement. This allegation could not be farther from the
9 truth. After Judge Hascheff sent his request for payment under the indemnity for his
10 defense costs on January 15, 2020, (see p. 3 Ms. Hascheff's Motion Exhibit 1) he
11 received a letter from Ms. Hascheff on January 17, 2020, asserting equitable claims.

12 On February 4, 2020, Ms. Hascheff's sister, Lucy Mason, also an attorney
13 emailed a demand for certain documentation. Judge Hascheff immediately responded
14 to the demand and provided the documents. On February 5, 2020 Judge Hascheff
15 emailed the documents Lucy Mason requested including without limitation canceled
16 checks for the payment of the attorney's fees related to the action, endorsement
17 showing the malpractice tail coverage, the actual policy, correspondence between him
18 and the carrier's adjuster, the MSA, the 40 page subpoena from the underlying trust
19 action, the malpractice complaint and the invoices from defense counsel. Please see
20 Exhibit 2:

21 The only documents Judge Hascheff did not provide to Lucy Mason were the
22 detailed billing invoices which contained privileged and confidential attorney-client
23 communications. Judge Hascheff did provide detailed billing statements to Ms.
24 Hascheff's counsel upon his request with only a few redacted entries.

25 Although Judge Hascheff previously provided all documents requested by Lucy
26 Mason, Ms. Hascheff's counsel unconditionally rejected the indemnification request
27 and then demanded the same documents. Judge Hascheff informed opposing counsel
28 said documents were previously provided. See Exhibit 3.

1 Ms. Hascheff's counsel then later demanded all correspondence between
2 Judge Hascheff and his defense counsel and the plaintiff in the malpractice action.
3 See Exhibit 3 attached to Ms. Hascheff's Motion. Ms. Hascheff's counsel falsely
4 asserted that the indemnification created a community debt which somehow entitled
5 him access to sensitive, confidential, and attorney-client information. This is
6 particularly disturbing as the equitable claims are still pending with the trial judge in the
7 underlying trust litigation. Judge Hascheff does not intend to provide this attorney-
8 client correspondence even though much of what took place were oral conversations
9 at meetings with his attorneys, See the Declaration of Judge Hascheff attached.

10 In contractual indemnity the indemnitee need only provide documentation
11 showing that the obligation to indemnify is within the scope and terms of the indemnity
12 and the defense costs and/or damages incurred. Judge Hascheff did exactly that. To
13 ask for anything more especially privileged correspondence and communication
14 between Judge Hascheff and defense counsel simply aims at harassing and
15 intimidating Judge Hascheff in order to delay payment of a legitimate obligation from
16 the MSA. Judge Hascheff is not hiding as Ms. Hascheff suggests behind the attorney
17 client privilege. Judge Hascheff paid the obligation for which he is entitled to
18 indemnification and provided as proof of payment and the actual invoices showing
19 payment.

20
21 ***6. False assertion that Judge Hascheff's indemnity letter dated January 15, 2020
contained misleading information and statements.***

22 Ms. Hascheff argues that Judge Hascheff's letter requesting indemnity
23 contained misleading information. Judge Hascheff stated that the malpractice litigation
24 was ongoing, and he would be sending additional invoices. In this letter Judge
25 Hascheff attached the invoices showing the total amount due and Ms. Hascheff's one
26 half. Because the malpractice action was stayed, Ms. Hascheff argues he
27 misrepresented that the malpractice action was ongoing and he did not disclose that
28 the invoices and costs related to his testimony by deposition and at trial with respect to

1 the underlying litigation was in a capacity of a percipient witness and unrelated to any
2 malpractice action. Third, he demanded \$5200.90 when in fact he only paid \$1000. As
3 a related argument since Judge Hascheff paid most of the invoices, the insurance
4 carrier must have believed that the malpractice action and threat had no merit
5 otherwise they would have paid the invoices. Finally, Ms. Hascheff asserts that since
6 the malpractice action has been stayed and no costs have been incurred, therefore
7 she has no liability under the indemnity agreement. All such statements and
8 allegations are false.

9 First the malpractice action is ongoing. The attorneys stipulated that the action
10 be stayed because the equitable claims have not yet been resolved only legal claims
11 have been resolved. The equitable claims are still pending before Judge Hardy and
12 the attorneys are awaiting that decision. The lawyers do not want to proceed with the
13 malpractice action until these equitable claims are decided. Judge Hascheff has
14 incurred and will continue to incur costs both in the equitable claim litigation and the
15 malpractice litigation. He has and will continue to receive additional invoices.

16 As indicated in section 4 above, before a malpractice action is filed the plaintiff
17 will generally proceed with the underlying litigation first to determine the outcome and
18 if the plaintiff loses in the underlying litigation it will then have a sufficient factual basis
19 to proceed against the attorney whose advice cause damage to the plaintiff in the
20 malpractice action. Therefore, Judge Hascheff was not just a percipient witness in the
21 underlying litigation. He was there to substantiate his advice was accurate and met the
22 standard of care. The jury agreed with him and hopefully the judge will in the
23 underlying equitable claims. To argue that Ms. Hascheff is not liable for his testimony
24 for 4 days and countless hours of preparation is ridiculous.

25 The required elements of a legal malpractice claim are (1) an attorney-client
26 relationship; (2) a duty owed to the client by the attorney to use such skill, prudence
27 and diligence as lawyers of ordinary skill and capacity possess in exercising and
28 performing the tasks which they undertake; (3) a breach of that duty; (4) the breach

1 being the proximate cause of the client's damages; and (5) actual loss or damage
2 resulting from the negligence. *Sorensen v. Pavlikowski* 94 Nev. 440, 443, 581 P2d
3 2nd 851, 853 (1978). See also NRS 11.207 which provides the statute of limitations
4 will not commence to run against an attorney malpractice cause of action until the
5 claimant sustains damages. Therefore, the attorney's action or inaction must be the
6 proximate and actual cause of the damages to the client.

7 Several Nevada cases hold that the underlying litigation must conclude
8 including appeals when the legal malpractice action alleges errors in the course of the
9 underlying litigation. See *Hewitt v. Allen* 118 Nev. 216, 221, 43P 3rd 345, 348 (2002);
10 *Semenza v. Nevada Med. Liab. Ins. Co.* 104 Nev. 666, 668, 765P. 2D 184, 186 (1988)
11 (the purpose of the litigation malpractice tolling rule is to prevent malpractice litigation
12 where the underlying damage is speculative or remote since the apparent damage
13 may banish with a successful prosecution of an appeal and ultimate vindication of the
14 attorney's conduct by the appellate court); and *Kopicko v. Young* 114 Nev. 1333, 971P
15 2nd 789 (1998) (the malpractice action did not accrue until dismissal of the appeal on
16 the underlying litigation because no legal damages had yet been sustained as a result
17 of the alleged negligence). As a result, if at the commencement of the malpractice
18 action in the context of transactional legal malpractice there is the presence of a
19 separate litigation regarding the transaction, the malpractice action will be stayed
20 pending the resolution of the underlying action. It should also be noted that the stay is
21 effective for purposes of the 2- and 5-year provisions under NRCP Rule 41 (e).

22 The reason Judge Hascheff engaged counsel and substantial resources were
23 invested in the underlying trust litigation in order to show that his advice and
24 documents he prepared were correct and in the best interest of his client. The jury
25 agreed with respect to the legal claims of damages in the underlying litigation. Now
26 only the equitable claims are pending before the trial court. See *Kahn v. Mowbray* 121
27 Nev. 464, 117 P 3rd 227 (2005) (whenever any issues, claims or facts are decided in
28 the prior underlying litigation they are collaterally barred from relitigating even if a claim

1 of legal malpractice had not yet accrued discussing the applicability of collateral
2 estoppel, issue and claim preclusion i.e. res judicata). It should be noted in *Kahn* case
3 the court concluded that most of the issues involved in the malpractice suit were **not**
4 actually and necessarily litigated in the prior underlying prior action and therefore the
5 Nevada Supreme Court allowed the malpractice action to proceed. However, the
6 Nevada Supreme Court made it very clear that if the issues and facts were the same
7 or potentially said matters could have been brought up in the underlying litigation the
8 claimant will be barred in a subsequent malpractice action.

9 Judge Hascheff in fact paid the amount shown in the January 15, 2020 letter
10 and not just \$1000. The insurance carrier paid \$2500 towards Judge Hascheff's
11 attorney because they believed that the underlying litigation was a precursor to the
12 malpractice action and decided to pay \$2500 towards the outstanding invoices even
13 though they were not required to under the policy. There was also a \$10,000
14 deductible which caused the remaining invoices to be paid by Judge Hascheff. This
15 deductible did not kick in until the malpractice action was filed and therefore any legal
16 bills other than the \$2500 was paid by Judge Hascheff as shown in the invoices.

17 Although the malpractice action is stayed for the moment Judge Hascheff's
18 attorney is incurring fees and costs in appearances in front of that judge. The judge
19 agreed to the stay because he understands that the underlying litigation must be
20 concluded before proceeding with the malpractice action.

21 Ms. Hascheff admits in her motion that she should be responsible only for fees
22 incurred after Judge Hascheff is sued for malpractice. See Motion page 3, lines 1-4. A
23 review of the invoices clearly demonstrate that the \$1300, \$150, and \$2150 invoice
24 represent costs incurred prior to the filing of the malpractice action of which the
25 insurance company paid \$2500. The balance of the invoices representing \$8748.10 of
26 the fees and costs were incurred after the malpractice action was filed which means
27 Ms. Hascheff would be responsible by her own admission for \$4374.50 and any
28

1 ongoing invoices not paid by the carrier until the deductible is met. Please see the
 2 following spreadsheet/analysis:

Date	Amount Incurred (before malpractice suit filed)	Amount Incurred (after malpractice suit)	Total
9/14/2018	\$1,300.00		
10/5/2018	\$50.00		
10/18/2018	\$100.00		
11/16/2018	\$125.00		
11/17/2018	\$2,025.00		
1/24/2019		\$825.00	
1/31/2019		\$1.80	
2/5/2019		\$75.00	
2/19/2019		\$1,025.00	
2/20/2019		\$1,175.00	
2/21/2019		\$1,775.00	
2/22/2019		\$1,875.00	
2/24/2019		\$600.00	
2/25/2019		\$900.00	
3/22/2019		\$200.00	
6/21/2019		\$200.00	
7/1/2019		\$20.00	
9/25/2019		\$75.00	
3/31/2019		\$1.30	
Total Fees	\$3,600.00	\$8,748.10	
Paid by insurance	(\$2,500.00)		
Remaining Due from Ms. Hascheff (1/2)	\$1,100.00	\$8,748.10	\$9,848.10
			\$4,924.05

25 //
 26 //

1 **7. Ms. Hascheff is NOT entitled to attorney's fees.**

2 Section 35 clearly provides that any party intending to bring an action or
3 proceeding to enforce this agreement shall not be entitled to recover attorney's fees
4 and costs unless she first gives the other party at least 10 days written notice before
5 filing the action or proceeding. That written noticed must include (one) whether the
6 subsequent action or proceeding is to enforce the original terms of the agreement (2)
7 the reasons why the moving party believes the subsequent action or proceeding is
8 necessary (3) whether there is any action that the other party may take to avoid the
9 necessity for the subsequent action or proceeding and (4) a period of time within which
10 the other party may avoid the action or proceeding by taking the specified action. Ms.
11 Hascheff failed to provide the appropriate 10-day written notice as well as the section
12 35 disclosures and therefore she is not entitled to attorney's fees.

13 Judge Hascheff by contrast is entitled to attorney's fees on two fronts. First, he
14 sent a ten-day notice to Ms. Hascheff's attorney on March 1, 2020. See Ms. Hascheff's
15 motion Exhibit 4 and Exhibit 7. As provided by the above case law, the indemnity and
16 the duty to defend by their very definition include attorney's fees and costs incurred in
17 the underlying litigation and to enforce the indemnity otherwise the indemnitee is not
18 made a whole under the theory of restitution. In addition, Ms. Hascheff counsel was
19 advised early on he was wrong on the law but chose to proceed anyway. See Exhibit
20 4.

21 **8. Ms. Hascheff's remaining arguments**

22 Ms. Hascheff's remaining arguments are without merit and will not be
23 responded to because they have nothing to do with Judge Hascheff's contractual right
24 to be reimbursed for his defense costs and if a judgment is entered against him in the
25 malpractice action to also be reimbursed under the clear terms of the indemnity
26 agreement. The argument now asserted for the first time after 8 years that Judge
27 Hascheff took advantage of his wife in negotiating the MSA and convinced her to
28 ignore her lawyer is completely without merit. Ms. Hascheff's counsel fails to disclose

1 that he was her counsel throughout out and approved all of the drafts including the
2 final draft of the which included the indemnity language from the outset. Ms.
3 Hascheff's attorney advised her to sign it See *Companelli v. Conservas* supra (signing
4 party is conclusively presumed to know and consent to its contents). The cases cited
5 by Ms. Hascheff applied when the spouse was convinced by her attorney husband to
6 proceed without an attorney and therefore, she did not have competent and
7 independent counsel advising her. Those cases would not apply in this case unless
8 her counsel was not independent and incompetent.

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CONCLUSION

As a result of the foregoing, Judge Hascheff moves this Court for an order as follows

1. That Petitioner, Lynda Hascheff's, MOTION FOR CLARIFICATION OR DECLARATORY RELIEF REGARDING TERMS OF MSA AND DECREE be denied.
2. For such other relief that the Court deems appropriate.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated July 1, 2020.

The Law Office of
Todd L. Torvinen, Chtd.



Todd L. Torvinen, Esq.
Attorney for Pierre Hascheff

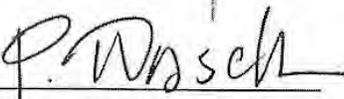
DECLARATION OF PIERRE A. HASCHEFF

I, Pierre A. Hascheff hereby make the following statements. I declare under penalty of perjury that the following is true and correct.

1. Pursuant to the billing statements and invoices previously send to Lucy Mason and Ms. Hascheff's attorney the total amount of the invoices is \$12,348.10. Of that amount \$3600 was incurred prior to the filing of the malpractice complaint on December 26,2018.
2. Allied world insurance company paid \$2500 of the \$3600 leaving \$1100 which I paid. The balance of the fees \$8748.10 was incurred after the filing of the malpractice complaint. I also paid that amount.
3. There is an outstanding bill which I have not yet received which should be approximately \$700. I anticipate that there will be additional attorneys' fees and costs until the underlying trust litigation and malpractice litigation is concluded.
4. Allied world insurance company is not required to pay any sums pursuant to the malpractice coverage. However Allied agreed to pay the \$2500 to allow my defense counsel to review the subpoena and start the defense.
5. The policy also provides that the insurance company retention/deductible of \$10,000 does not commence to accrue until after the malpractice complaint is filed. That is why I was required to continue to pay for the fees and costs prior to the filing of the complaint. We still have not exhausted the \$10,000 deductible and anticipate additional payments will be made by myself to the company until their obligation to pay the fees applies.
6. I did not keep any potential malpractice claim or the malpractice lawsuit secret from Ms. Hascheff. I understood and therefore anticipated there would be a quick resolution to the underlying trust litigation however it took longer to resolve than originally anticipated. My intent was to simply provide the final bills under the indemnity but when the underlying trust litigation appeared that it may go on for a substantial period of time I notified Ms. Hascheff of the indemnity agreement and included the invoices
6. At the time we signed the marital settlement agreement on September 1, 2013 I had no knowledge that they were any potential malpractice claims. In Almost 30 years of practicing law I never was sued for malpractice nor was I confronted with any claims.
7. Currently being legal claims have been decided by the jury in the underlying trust litigation and it is my understanding that there are equitable claims pending before the District Court. As a result, the malpractice litigation was placed on hold before that judge until the equitable claims can be concluded.
8. Because the resolution of the underlying trust litigation is critical in determining whether a malpractice action will proceed, I immediately retained defense counsel.
9. Many of my conversations and communications with my lawyer and or communications with other attorneys involved in the underlying trust litigation were done in person. I do not believe that any written documentation between myself and my lawyer involving deposition and trial strategy should be produced because it involves sensitive and confidential information.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Executed on July 6, 2020.



Pierre A. Hascheff

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EXHIBIT INDEX

Exhibit 1	Declaration of Todd Alexander	2 pages
Exhibit 2	Email between Judge Hascheff and Lucy Mason	2 pages
Exhibit 3	Email between Judge Hascheff and Shawn Meador	2 pages
Exhibit 4	Email between Judge Hascheff and Shawn Meador	2 pages

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

Pierre A Hascheff }
vs. }
Lynda L. Hascheff }

FAMILY COURT MOTION/OPOSITION NOTICE (REQUIRED)	
CASE NO.	DV13-0016576
DEPT. NO.	12

NOTICE: THIS MOTION/OPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X .	YES	NO
	1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input type="checkbox"/>
	IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: 7-6-20

Signature:

Todd L. Torvinen

Print Name:

Todd L. Torvinen, Esq.

Print Address:

232 Court Street

Reno, NV 89501

Telephone Number:

(775) 825-6066

FILED
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2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "1"

EXHIBIT "1"

AA 0721

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
3 COUNTY OF WASHOE) ss.
4

5 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

6 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
7 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

8 2. I was retained by Hascheff once he received a multi-page subpoena requesting
9 any and all documents, correspondence, communications etc. with respect to his estate
10 planning and related advice to Samuel Jaksick and related parties.

11 3. It was prudent on Hascheff's part to retain counsel immediately because the
12 information requested clearly was aimed at undermining his estate plan and advice which
13 could lead to a malpractice action depending on the jury verdict.

14 4. It was clear that Hascheff was being accused of malfeasance and mishandling
15 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
16 their share of the estate.

17 5. There was also a possible claim by another beneficiary that Hascheff provided
18 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
19 brother and sister with a substantial damage claim against him.

20 6. Hascheff was clearly at risk depending on the outcome of the underlying
21 litigation.

22 7. There were two days of depositions and two days of trial testimony, not to
23 mention countless meetings with various attorneys to protect Hascheff's interests.

24 8. The fees and costs incurred in this case were necessary and reasonable to
25 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
26 million dollar claim against him outside the coverage limits of his applicable insurance policy.

27 9. It should be noted that malpractice actions are not typically filed until the
28 conclusion of the underlying litigation to determine whether the attorney is guilty of
malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

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2020-07-06 03:45:21 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7956749 : yvioria

EXHIBIT "2"

EXHIBIT "2"

AA 0724

From: Pierre Hascheff pierre@pahascheff.com
Subject: Re: Attached Image
Date: Feb 5, 2020 at 4:41:58 PM
To: Lucy Mason lucy.masonsena@yahoo.com

EXHIBIT 2

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.

There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to

enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

On Feb 11, 2020, at 11:24 AM, Diana Lechner <diana@nelwscott.com>

wrote:

Enclosed is the amount due for your account.

Very respectfully,
Diana Lechner

FILED
Electronically
DV13-00656
2020-07-06 03:45:21 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7956749 : yvioria

EXHIBIT "3"

EXHIBIT "3"

AA 0727

Exhibit 3

Sent: Monday, March 02, 2020 2:47 PM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: Re: Indemnity

It will be quicker to get the documents from Lucy. Took me a lot of time to locate the documents and make the copies. I don't have that kind of time now to go back and do it all again.

I've already sent correspondence to Lucy explaining the delay. There has been absolutely no prejudice for notifying her after the underlying litigation was mostly concluded. There was absolutely nothing you or anyone could do during the underlying litigation. Also it is common practice to require a lawyer in the underlying litigation to testify first and determine if any errors were made then file a malpractice action. To suggest that I should be deposed for three days and a witness at trial for two days without the benefit of the lawyer to protect our interest and avoid a malpractice claim is simply foolish. The threat of malpractice was a common thread throughout the litigation. My lawyer was there to provide a defense for the pending malpractice action.

The time entries contain attorney-client communications. I am not going to waive the privilege. Lucy has all of the invoices showing what the insurance company paid. I believe it was only \$2500 the rest I had to pay. The information Lucy has is all you need to evaluate the claim. The indemnity agreement is very broad and does not say that the fees and costs must be incurred after the malpractice case is filed.

Sent from my iPad

On Mar 2, 2020, at 8:37 AM, Shawn Meador <smeador@woodburnandwedge.com> wrote:

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

FILED
Electronically
DV13-00656
2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "4"

EXHIBIT "4"

AA 0730

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador
Cc: Todd Torvinen
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRC 16.21

This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because

those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days

Sent from my iPad

1 CODE: 2145
2 Todd L. Torvinen, Esq.
3 Nevada Bar No. 3175
4 232 Court Street
5 Reno, NV 89501
6 (775) 825-6066

7
8 IN THE FAMILY DIVISION OF
9 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF WASHOE

11 PIERRE A. HASCHEFF,
12
13 Plaintiff,

Case No: DV13-00656
Dept No: 12

14 -vs-

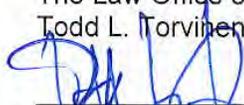
15 LYNDA L. HASCHEFF,
16
17 Defendant.

18
19 **MOTION FOR ORDER TO SHOW CAUSE, OR IN THE ALTERNATIVE,**
20 **TO ENFORCE THE COURT'S ORDERS**

21 COMES NOW, Plaintiff, by and through his attorney, Todd L. Torvinen, Esq.,
22 and hereby moves this Court to order Defendant to appear and show cause why he
23 should not be held in contempt of Court for violation of the FINDINGS OF FACT,
24 CONCLUSIONS OF LAW AND DECREE OF DIVORCE, filed on November 15, 2013.
25 In the alternative, Plaintiff requests an order enforcing the Court's orders. Plaintiff will
26 file a separate motion for attorney's fees and costs.

27 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
28 affirm that the preceding document does not contain the social security number of any
person.

Dated: July 8, 2020.

The Law Office of
Todd L. Torvinen, Chtd.


Todd L. Torvinen, Esq.

1 POINTS AND AUTHORITIES

2 **1. Background and Procedure.**

3 On June 16, 2020, Lynda Hascheff ("Ms. Hascheff") through counsel filed a
4 Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree
5 ("Motion"). Ms. Hascheff's Motion refers to the marital settlement agreement ("MSA")
6 between the parties dated September 1, 2013, incorporated into the parties' Findings
7 of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013.

8 Judge Hascheff's counsel asserts no objection to this Court interpreting section
9 40 of the MSA in part because the interpretation is a question of law for this Court and
10 that the language is clear and unambiguous; and because Judge Hascheff now files
11 this Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's
12 Orders. Judge Hascheff filed his Opposition to Ms. Hascheff's Motion on July 6, 2020,
13 and the facts and legal authorities are incorporated herein by reference.

14 **2. Indemnification Required by the Parties' MSA.**

15 In the event Judge Hascheff is sued for malpractice, Section 40 of the parties'
16 MSA requires Ms. Hascheff to indemnify him for one half (1/2) of the cost of any
17 defense and judgment irrespective of when the fees and costs are incurred. See
18 below.

19 **Indemnity and Hold Harmless**

20 40. Except for the obligations contained in or expressly arising out of this Agreement, each
21 party warrants to the other that he or she has not incurred, and shall not incur, any liability or
22 obligation for which the other party is, or may be, liable. Except as may be expressly provided
23 in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be
24 brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission
25 of the other, the warranting party shall, at his or her sole expense, defend the other against the
26 claim, action, or proceeding. The warranting party shall also indemnify the other and hold him
27 or her harmless against any loss or liability that he or she may incur as a result of the claim,
28 action, or proceeding, including attorney fees, costs, and expenses incurred in defending or
responding to any such action. In the event Husband is sued for malpractice, Wife agrees to
defend and indemnify Husband for one half (1/2) the costs of any defense and judgment
Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

1 In late July 2018, Judge Hascheff received a 41-page subpoena requiring his
2 response in a trust litigation dispute between beneficiaries for which Judge Hascheff
3 as a lawyer prepared an estate plan and rendered legal advice to Samuel Jaksick. The
4 subpoena received by Judge Hascheff requested information which clearly created a
5 possible malpractice claim against him.

6 Judge Hascheff hired counsel, through his malpractice carrier, Todd Alexander
7 to represent his interests in the Jaksick trust litigation matter. In early 2019, Judge
8 Hascheff was also deposed and testified at trial. At trial, the legal claims resulted in
9 favorable outcome regarding the advice and estate plan. There are equitable claims
10 asserted by in the trust litigation matter which remain under submission awaiting
11 judicial determination. See affidavit of Todd Alexander attached as Exhibit 1.

13 On December 26, 2018, one of the beneficiaries in the underlying trust litigation
14 described above, filed a malpractice complaint against Judge Hascheff relating to the
15 legal advice and estate planning he performed for Samuel Jaksick. This malpractice
16 action was stayed pending the outcome in the Jaksick trust litigation. It remains stayed
17 as the equitable claims asserted in the trust litigation await determination.

19 On or about January 15, 2020, Judge Hascheff contacted his ex-spouse, Lynda
20 Hascheff, and informed her of the indemnification required under Section 40 of the
21 MSA. Judge Hascheff requested the indemnity payment from Ms. Hascheff. She
22 refused to immediately indemnify him. Instead, Judge Hascheff was contacted by Ms.
23 Hascheff's sister, Lucy Mason (also a lawyer) regarding the indemnification.

25 On February 4th, 2020, Lucy Mason requested Judge Hascheff provide her with
26 information regarding the indemnification due from Ms. Hascheff. He did so. By
27 February 5, 2020 Lucy Mason received all the documents requested. See Exhibit 2
28

1 attached. Consistent with Section 40 of the MSA, Judge Hascheff requested through
2 Lucy Mason again that Ms. Hascheff reimburse him for one half of the costs and
3 lawyer fees incurred related to the malpractice action at the time in the sum of
4 \$4675.90 (one half of \$9351.80). See Exhibit 2.

5 **2. Enforcement Provisions Contained in the Parties' MSA.**

6 After Judge Hascheff emailed Lucy Mason all the requested documents and
7 information, he then received direction to contact Ms. Hascheff's lawyer, Shawn
8 Meador, Esq., in order to proceed further with the indemnification claim vis-à-vis Ms.
9 Hascheff again further delaying his reimbursement. On March 1, 2020, he emailed Mr.
10 Meador. Key to this email, are Sections 35.1 and 35.2 of the MSA. They are
11 reproduced below.
12
13

14 **Payment of Future Attorney Fees and Costs to Prevailing Party**

15 35.1. If either party to this Agreement brings an action or proceeding to enforce any provision
16 of this Agreement, or to enforce any judgment or order made by a court in connection with this
17 Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable
18 attorney fees and other reasonably necessary costs from the other party.

19 35.2. A party intending to bring an action or proceeding to enforce this Agreement shall not be
20 entitled to recover attorney fees and costs under this provision unless he or she first gives the
21 other party at least 10 written notice before filing the action or proceeding. The written notice
22 shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of
23 the Agreement; (2) the reasons why the moving party believes the subsequent action or
24 proceeding is necessary; (3) whether there is any action that the other party may take to avoid the
25 necessity for the subsequent action or proceeding; and (4) a period of time within which the other
26 party may avoid the action or proceeding by taking the specified action. The first party shall not
27 be entitled to attorney fees and costs if the other party takes the specified action within the time
28 specified in the notice.

26 Perceiving that the indemnification matter seemed headed for the litigation
27 merry-go-round based upon the instruction to contact Ms. Hascheff's counsel, Judge
28

1 Hascheff emailed opposing counsel the following on March 1, 2020 in order to comply
2 with the requirements of Section 35.2:

3 From: Pierre Hascheff pierre@pahascheff.com
4 Subject: Indemnity
5 Date: Mar 1, 2020 at 11:57:43 AM
6 To: Shawn Meador smeador@woodburnandwedge.com

7 I was informed by Lucy Mason that I need to contact you regarding my
8 reimbursement for attorneys fees and costs incurred pursuant to
9 section 40 of the settlement agreement dated September 1, 2013.
10 The amount owed to date by Lynda is \$4675.90. I provided all the
11 documentation that Lucy requested which I assume you have which
12 includes the billing invoices. I intend to enforce the settlement
13 agreement because I've been sued for malpractice. A subsequent
14 action or set off is necessary because Lynda has refused to indemnify
15 me pursuant to section 40. We can avoid this action by her simply
16 making the payment referenced above within 10 days of this notice.
17 If the payment is not made within this 10 day I will proceed
18 accordingly.
19 Thank you for your consideration in this matter.
20 Sent from my iPad

21 **3. The Litigation Commences to Gain Leverage to Delay Payment.**

22 Unfortunately, opposing counsel then requested the very same documents
23 previously provided to Ms. Hascheff's sister, Lucy Mason (with the exception of the
24 attorney client privileged information requested). Further, by email correspondence
25 with Judge Hascheff, opposing counsel made irresponsible requests, non-applicable
26 legal assertions, and false accusations. These included: (1) production of attorney-
27 client privileged correspondence between Judge Hascheff and his defense/malpractice
28 lawyer and Jaksick's attorney, (2) asserting a fiduciary duty, and (3) accusing Judge
Hascheff of "keeping secrets." See opposing counsel's emails to Judge Hascheff of
March 2, and March 3, 2020, attached as Exhibit 3. Also note that the position taken

1 by Ms. Hascheff through opposing counsel appeared to be simply to “gain leverage
2 and delay the payment” of the indemnification required.

3 On April 20, 2020, Judge Hascheff emailed opposing counsel and pointed out
4 that indemnification claims generally do not include the indemnitor asserting a fiduciary
5 duty owed by the indemnitee or claims for breach of the implied covenant of good faith
6 and fair dealing. He respectfully provided a legal roadmap to resolve the case. See
7 Exhibit 4.

8 On June 16, 2020, Ms. Hascheff instead filed her Motion for Clarification or
9 Declaratory Relief regarding Terms of MSA and Decree. There she asserted additional
10 leverage gaining arguments/requests aimed at the delay noted above and also argued
11 that Judge Hascheff (4) made assertions in his request for indemnity which were
12 misleading and false, (5) refused to provide information requested by Ms. Hascheff, (6)
13 failed to disclose necessary information to Ms. Hascheff, (7) breached a fiduciary duty
14 because the malpractice action is a community obligation, and (8) that arguing for the
15 first time that Judge Hascheff seven years later took advantage of Ms. Hascheff in
16 negotiating the MSA.

17 Each of the leverage gaining delay arguments propounded by Ms. Hascheff are
18 addressed in Judge Hascheff’s Opposition to Motion for Clarification or Declaratory
19 Relief. He incorporates those herein by reference. Nevertheless, some brief discussion
20 may be appropriate.

21 First as to any fiduciary duty owed by Judge Hascheff to Ms. Hascheff
22 regarding indemnification, Ms. Hascheff cites *Williams v. Waldman*, 108 Nev. 466, 836
23 P.2d 614,619 (Nev. 1992). However, *Williams* is inapplicable where the nonlawyer
24 spouse has independent counsel. Further, *Cook v. Cook*, 912 P.2d 264, 112 Nev. 179
25 (Nev. 1996) holds that the fiduciary obligation requires independent and competent
26 counsel for a nonlawyer spouse. Strangely, since opposing counsel represented Ms.
27 Hascheff in the divorce matter, *Williams* and *Cook* only apply if opposing counsel
28

1 concedes his representation of Ms. Hascheff in the divorce and negotiation of the MSA
2 were otherwise.

3 Judge Hascheff believes he did not breach any fiduciary duty or implied
4 covenant(s) even if one existed. At its base, contractual indemnification like Section 40
5 of the parties' MSA is a straightforward contract matter. When a contract is clear on its
6 face, it will be construed from the written language and enforced as written, and the
7 court has no authority to alter the terms of an unambiguous contract. *Canfora v. Coast*
8 *Hotels and Casinos, Inc.*, 121 Nev. 771, 121 P.3d 599 (2005). Further, a fiduciary
9 obligation is not generally imposed with regard to and indemnification obligation in the
10 absence of an "special relationship." See *Insurance Co. of the West v. Gibson Tile*
11 *Co., Inc.*, 122 Nev. 455, 134 P.3d (2006). (fiduciary duty instruction not appropriate
12 when indemnitee brought indemnity action against the indemnitor). In light of these
13 cases, it would seem highly illogical to argue a "special relationship" raising a fiduciary
14 obligation unless Ms. Hascheff argues that opposing counsel was not independent
15 and/or not competent at the time he represented her in the negotiation and the
16 execution of the parties' MSA.

17 Ms. Hascheff also argued that Judge Hascheff breached the implied covenant
18 of good faith and fair dealing. However, an action in tort for breach of the covenant
19 arises only in rare and exceptional cases when there is a special relationship between
20 the victim and tortfeasor which is characterized by elements of public interest,
21 adhesion, and fiduciary responsibility. See *Kmart Corp. v. Ponsock*, 103 Nev. 39, 49,
22 732P. 2nd 1364, 1370 (1987) (abrogated on other grounds). Section 40 of the MSA
23 contains no notice provision in order to trigger indemnification and therefore notice is
24 not required.

25 Finally, and briefly, Ms. Hascheff accuses and accused Judge Hascheff of
26 communicating the malpractice risk and malpractice claim in a misleading fashion.
27 Unfortunately, she fails to understand the nature of a malpractice claim. The
28 underlying trust litigation case in which Judge Hascheff was a witness created the real

1 threat of malpractice litigation; and further the underlying trust litigation case requires
2 resolution prior to litigation of the malpractice issues. This is precisely why the
3 malpractice claim filed on December 26, 2018 is stayed by Court stipulation. See
4 *Hewitt v. Allen* 118 Nev. 216, 221, 43P 3d 345, 348 (2002); *Semenza v. Nevada Med.*
5 *Liab. Ins. Co.* 104 Nev. 666, 668, 765P. 2d 184, 186 (1988) (Holding that the
6 underlying litigation must first conclude including appeals when the legal malpractice
7 action alleges errors in the course of the underlying litigation).

8 Todd Alexander, in his declaration, asserts that the legal fees Judge Hascheff
9 incurred with his malpractice/defense counsel, Todd Alexander prior to the filing of the
10 actual malpractice complaint on December 26, 2018, sounded principally in and were
11 directly related to malpractice issues. See Exhibit 1 attached. Ms. Hascheff
12 nonsensically asserted in her Motion for Clarification or Declaratory Relief that Judge
13 Hascheff should have answered the subpoenas, attended the deposition, and
14 appeared at trial without counsel.

15 Judge Hascheff asserts that a four-corners reading and interpretation of the
16 entire MSA Section 40 reasonably requires the payment of all attorney fees and costs
17 relating to the underlying Jaksick trust litigation as it is directly related to the
18 malpractice action. Generally, the terms of Judge Hascheff's malpractice tail policy
19 requires him to pay the first \$10,000 of fees and costs, and then the insurance
20 company, Allied World pays the rest. Nevertheless, the fact that the insurance
21 company picked up the defense and paid defense fees in the trust litigation of \$2500,
22 although not required under the policy, gives compelling proof that Judge Hascheff's
23 involvement in the underlying trust case primarily involved potential malpractice
24 claims. See below.

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LEMONS, GRUNDY & EISENBERG
 6005 Plumas Street, Third Floor
 Reno, Nevada 89519-6000
 (775) 786-6868
 Tax I.D. #88-0122938

Page: 1
08/27/2019

Allied World
 BILL THROUGH SERENGETI

OUR ACCOUNT NO: 52-8603M
 STATEMENT NO. 8

ATTN: Andy Kenney

Hascheff, Pierre re: Allied World
 2018018714

	PREVIOUS BALANCE	\$11,851.80
03/25/2019	Payment - Thank you Allied World	-1,300.00
03/25/2019	Payment - Thank you Allied World	-150.00
04/08/2019	Payment - Thank you PAH Limited LLC	-1,000.00
04/16/2019	Payment - Thank you Allied World	-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC	-1,000.00
	TOTAL PAYMENTS	-4,500.00
	BALANCE DUE	\$7,351.80

\$2500

Notwithstanding the compelling proof above, she argues that Allied did not believe the threat of a malpractice claim existed and that's why Judge Hascheff was required to pay most of the fees. However, in her Motion, Ms. Hascheff apparently admits that fees incurred after the date of the filing of the malpractice complaint on December 26, 2018 are subject to the 40-indemnification clause. Approximately 89% of the uncovered fees incurred by Mr. Alexander were incurred and in fact occurred after the date of filing the malpractice complaint **and** therefore at a minimum she owes all fees and costs incurred and continuing to accrue after that date. Please see the following spreadsheet:

Date	Amount Incurred (before malpractice suit filed)	Amount Incurred (after malpractice suit)	Total
9/14/2018	\$1,300.00		
10/5/2018	\$50.00		
10/18/2018	\$100.00		
11/16/2018	\$125.00		
11/17/2018	\$2,025.00		

	Amount Incurred (before malpractice suit filed)	Amount Incurred (after malpractice suit)	Total
1/24/2019		\$825.00	
1/31/2019		\$1.80	
2/5/2019		\$75.00	
2/19/2019		\$1,025.00	
2/20/2019		\$1,175.00	
2/21/2019		\$1,775.00	
2/22/2019		\$1,875.00	
2/24/2019		\$600.00	
2/25/2019		\$900.00	
3/22/2019		\$200.00	
6/21/2019		\$200.00	
7/1/2019		\$20.00	
9/25/2019		\$75.00	
3/31/2019		\$1.30	
Total Fees	\$3,600.00	\$8,748.10	
Paid by insurance	(\$2,500.00)		
Remaining Due from Ms. Hascheff (1/2)	\$1,100.00	\$8,748.10	\$9,848.10
			\$4,924.05

As a result, one can only conclude that Ms. Hascheff chose and chooses to intentionally disobey the order of this Court.

4. Ms. Hascheff Should be Ordered to Appear and Show Cause

Pursuant to NRS 22.010, contempt includes acts of disobedience or resistance to any lawful writ, order, rule, or process issued by the Court. Any order meant to be the subject of a contempt proceeding must be clear, unambiguous, and set forth the details of compliance in clear, specific terms, so the parties will know what duties or obligations are imposed. *Cunningham v. Dist. Ct.*, 102 Nev. 551, 729 P.2d 1328

1 (1986). To that end, dispositional orders must be entered, in writing, prior to a person
2 being found in contempt. *Div. of Child and Family Serv. v. Eighth Jud. Dist. Ct.*, 120
3 Nev. 445, 454, 92 P.3d 1239, 1245 (2004).

4 The party moving for an order to show cause must make a prima facie showing
5 that the non-moving party had the ability to comply with the order and that his or her
6 violation was willful. See *Rodriguez v. Dist. Court*, 120 Nev. 798, 102 P.3d 41 (2004).
7 All motions requesting that a party be ordered to appear and show cause must be
8 accompanied by a detailed affidavit. NRS 22.010(2); see also *Award v. Wright*, 106
9 Nev. 407, 794 P.2d 713 (1990) (overruled on other grounds). WDCR 42(2) as
10 amended by ADKT 0544 on November 27, 2019, also requires the affidavit to include
11 the title and filing date of the order the moving party claims has been violated, the date
12 and method of service of the order on the party alleged to be in contempt, and specific
13 facts describing the alleged contempt.

14 Ms. Hascheff chooses to willfully disobey the Findings of Fact, Conclusions of
15 Law and Decree of Divorce entered November 15, 2013, which incorporated the terms
16 of the parties' MSA dated September 1, 2013. Even though she admitted at a
17 minimum that any fees incurred after December 26, 2018, the date of filing of the
18 malpractice complaint are subject to the indemnity requirements of MSA Section 40.
19 She continues to make ill-advised and even nonsensical arguments as a course of
20 conduct to "gain leverage and delay payment."

21 **5. In the Alternative, Ms. Hascheff Should be Ordered to Comply with the Court's**
22 **Orders**

23 WDCR 10(3)(a) permits parties to request alternative relief in one pleading. In
24 Nevada, NRS 125.240 grants district courts broad discretionary authority to enforce its
25 orders before or after judgment by any means "it deems necessary."

26 In the event the Court determines that Defendant's actions do not rise to the
27 level of contempt, Plaintiff asks that the Court enforce its orders by requiring
28 Defendant to pay the required one half indemnification amount to Judge Hascheff in

1 the sum of \$4924.05 (plus ½ of any later accrued and accruing fees and costs), and
2 award Judge Hascheff attorney's fees as ordered. Further, Judge Hascheff carefully
3 complied with Sections 35.1 and 35.2 of the MSA. After several attempts to resolve
4 and compromise the dispute, eventually he emailed opposing counsel the ten-day
5 writing triggering Ms. Hascheff's opportunity to end the matter gracefully and
6 economically at that point. Instead, she chose and continues to choose to litigate to
7 gain leverage and delay payment. Judge Hascheff is also entitled to attorney fees as
8 provided in Section 35.2 as he followed the procedure required to gain compliance.
9 Ms. Hascheff therefore received an additional opportunity to comply, and intentionally
10 chose not to comply. As a result, attorney fees should be ordered upon filing the
11 required affidavit.

12 For the foregoing reasons, Judge Hascheff moves this Court:

- 13 1. To issue an order for Ms. Hascheff to show cause as to why she intentionally
14 disobeys this Court's order (Findings of Fact, Conclusions of Law and Decree of
15 Divorce incorporating the terms of the parties' MSA, or in the alternative,
- 16 2. To enforce the terms of the parties' incorporated MSA, and order the
17 payment of the indemnification, and
- 18 3. Order Ms. Hascheff pay Judge Hascheff's attorney fees and costs whether
19 this matter proceeds as contempt, or as an order for enforcement upon affidavit from
20 counsel.

21 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
22 affirm that the preceding document does not contain the social security number of any
23 person.

24 Dated: July 8, 2020.

25
26
27
28

The Law Office of
Todd L. Torvinen, Chtd.


Todd L. Torvinen, Esq.

DECLARATION OF PIERRE A. HASCHEFF

I, Pierre A. Hascheff, hereby make the following statements. I declare under penalty of perjury that the following is true and correct.

1. On September 1, 2013, Lynda Hascheff and I signed the Marital Settlement Agreement. Section 40 required Ms. Hascheff to indemnify me for one half (1/2) of the cost of any defense and judgment irrespective of when the fees and costs are incurred. Further, notice is not required to trigger indemnification under Section 40.
2. Pursuant to this agreement, I contacted Ms. Hascheff and informed her of the indemnification. The billing statements and invoices were sent to Lucy Mason and Ms. Hascheff's attorney. The total amount of the invoices is \$12,348.10. Of that amount \$3600 was incurred prior to the filing of the malpractice complaint on December 26, 2018.
3. Allied World insurance company paid \$2500 of the \$3600 leaving \$1100 which I paid. The balance of the fees \$8748.10 was incurred after the filing of the malpractice complaint. I also paid that amount.
4. There is an outstanding bill which I have not yet received which should be approximately \$700. I anticipate that there will be additional attorneys' fees and costs until the cases are concluded.
5. Allied World insurance company is not required to pay any sums pursuant to the malpractice coverage. However Allied agreed to pay the \$2500 to allow my defense counsel to review the subpoena and start the defense in the trust litigation.
6. The policy also provides that the insurance company retention/deductible of \$10,000 does not commence to accrue until after the malpractice complaint is filed. That is why I was required to continue to pay for the fees and costs prior to and after the filing of the complaint. We still have not exhausted the \$10,000 deductible and anticipate additional payments will be made by myself to the company until their obligation to pay the fees applies.
7. I did not keep any potential malpractice claim or the malpractice lawsuit secret from Ms. Hascheff. I understood and therefore anticipated there would be a quick resolution to the underlying trust litigation however it took longer to resolve than originally anticipated. My intent was to simply provide the final bills under the indemnity but when the underlying trust litigation appeared that it may go on for a substantial period of time I notified Ms. Hascheff of the indemnity agreement and included the invoices
8. At the time we signed the marital settlement agreement on September 1, 2013 I had no knowledge that they were any potential malpractice claims. In almost 30 years of practicing law I never was sued for malpractice nor was I confronted with any claims.
9. The legal claims have been decided by the jury in the underlying trust litigation and it is my understanding that there are equitable claims pending before the District Court awaiting determination. As a result, the malpractice litigation was placed on hold before that judge until the equitable claims can be concluded.
10. Because the resolution of the underlying trust litigation is critical in determining whether a malpractice action will proceed, I immediately retained defense counsel.
11. Many of my conversations and communications with my lawyer and or communications with other attorneys involved in the underlying trust litigation were done in person. I do not believe that any written documentation between myself and my lawyer involving deposition and trial strategy should be produced because it involves sensitive and confidential information especially given the ongoing nature of both current actions.
12. I believe Ms. Hascheff's position is to gain leverage and delay payment of the indemnification required under the MSA as she has made irresponsible requests, non-applicable legal assertions, and false accusations through her email correspondence via her counsel and through her Motion for Clarification or Declaratory Relief regarding Terms of MSA and Decree filed with this Court.
13. I do not believe I breached any fiduciary duty to Ms. Hascheff as no fiduciary obligation was imposed nor did I breach an implied covenant of good faith and fair dealing by not giving notice to trigger the indemnification as Section 40 of the MSA contained no notice provision. I do not believe notice was required. I informed both Lucy

Mason and Ms. Hascheff's attorney these claims were not consistent with Nevada law but they continued to assert said claims.

14. I contacted Ms. Hascheff regarding the indemnification payment per our agreement in the MSA and she has willfully refused to abide by the Court order despite her recent admission that any fees incurred after the Malpractice claim was filed on December 26, 2018, are subject to the indemnification requirement.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Executed on July 8th, 2020.



Pierre A. Hascheff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of Todd L. Torvinen, and that on July 8, 2020, I served a copy of the foregoing document on the parties identified below by using the ECF system which will send a notice of electronic filing to the following:

Shawn B. Meador, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511



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EXHIBIT INDEX

Exhibit 1	Declaration of Todd Alexander	2 pages
Exhibit 2	Email between Judge Hascheff and Lucy Mason	3 pages
Exhibit 3	Email between Judge Hascheff and Shawn Meador	2 pages
Exhibit 4	Email between Judge Hascheff and Shawn Meador	2 pages

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

Pierre Hascheff
vs.
Lynda Hascheff

FAMILY COURT MOTION/OPPPOSITION NOTICE (REQUIRED)	
CASE NO.	DJ13-60656
DEPT. NO.	12

NOTICE: THIS MOTION/OPPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A. Mark the CORRECT ANSWER with an X .		YES	NO
1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is this a motion or an opposition to a motion filed only to change the amount of child support?		<input type="checkbox"/>	<input type="checkbox"/>
4. Is this a motion or an opposition to a motion for reconsideration or a new trial <u>and</u> the motion was filed within 10 days of the Judge's Order?		<input type="checkbox"/>	<input type="checkbox"/>
IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.		Date	
B. If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.			

I affirm that the answers provided on this Notice are true.

Date: July 8 2020

Signature:

Todd L. Torvinen, Esq.

Print Name:

Todd L. Torvinen, Esq.

Print Address:

232 Court Street

Reno, NV 89501

Telephone Number:

(775) 825-6066

FILED
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Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "1"

EXHIBIT "1"

AA 0750

CERTIFICATE OF SERVICE

Pursuant to Rule 25(b) of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this date, I served a true and correct copy of the attached document through the Court's electronic filing system to the following registered users:

Debbie A. Leonard, Esq.
Nevada State Bar No. 8260
Leonard Law, PC
955 S. Virginia Street, Suite 220
Reno, Nevada 89502

*Attorneys for Respondent/
Cross-Appellant*

DATED this 16th day of November, 2023.

/s/ Diana L. Wheelen
An Employee of Fennemore Craig, P.C.