**3.16 Intentional Infliction of Emotional Distress**

[Plaintiff] claims that she/he suffered severe emotional distress as a result of intentional infliction of emotional distress.

In order to find in favor of [plaintiff] on this claim, you must find that it is more likely true than not true that:

1. [Defendant]’s conduct was extreme and outrageous;

2. [Defendant] intended to cause [plaintiff] to suffer emotional distress, or acted with reckless disregard of the probability of causing [plaintiff] to suffer emotional distress;

3. [Defendant]’s conduct caused [plaintiff] to experience severe emotional distress.

You must find all three of these elements present to compensate [plaintiff] for intentional infliction of emotional distress.

“Extreme and outrageous” conduct is conduct that goes beyond all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in a civilized community. Conduct that is merely unreasonable, unfair, or unkind does not qualify as extreme and outrageous conduct. Extreme and outrageous conduct is conduct that would cause an average member of the community to immediately react in outrage.

A person acts with reckless disregard of the probability of causing emotional distress to another if [she/he] does not intend to cause harm, but deliberately disregards a high degree of probability that emotional distress will follow from [his/her] actions.

Severe emotional distress is distress that is so substantial or enduring that no reasonable person should be expected to endure it. Severe emotional distress exists when a reasonable person would be unable to adequately cope with the mental stress caused by the circumstances. Examples include neuroses, [psychoses](https://1.next.westlaw.com/Link/Document/FullText?entityType=disease&entityId=Ic6c75a10475411db9765f9243f53508a&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)), chronic depression, phobia, post-traumatic stress disorder, and shock. But temporary fright, disappointment, or regret do not qualify as severe emotional distress.

**Use Note**

Instruction 3.07 (Substantial Factor) should be given together with this instruction.

**Comment**

Alaska law requires the court to make a threshold determination as to the first and third elements (outrageousness of the conduct, and severity of the emotional distress) to determine whether “the severity of the emotional distress and the conduct of the offending party warrant an instruction” on IIED. *Chizmar v. Mackie*, 896 P.2d 196, 208-09 (Alaska 1995); *see also Finch v. Greatland Foods, Inc*., 21 P.3d 1282, 1289-90 (Alaska 2001). Where “reasonable jurors could differ as to whether the evidence adduced at trial would satisfy these elements,” the case must go to the jury. *Chizmar*, 896 P.2d at 208.

The language defining “severe emotional distress” is taken from *Sowinski v. Walker*, 198 P.3d 1134, 1166 (Alaska 2008), in which the Alaska Supreme Court affirmed a very similar instruction.

Although Comment j to Restatement (Third) of Torts § 46 suggests that there may be a difference between “serious emotional distress” and “severe emotional distress,” the Alaska Supreme Court uses the terms interchangeably. *Fyffe v. Wright*, 93 P.3d 444, 456 n.34 (Alaska 2004), *partially disavowed on other grounds by Burton v. Fountainhead Dev., Inc.*, 393 P.3d 387, 392-93 & n.20 (Alaska 2017).