

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-25-570

JEFFREY HASKELL,

Plaintiff-Appellant,

v.

ROBERT KLINE, ESQ. AND KLINE LAW OFFICES,

Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE BUSINESS AND CONSUMER
COURT (CUMBERLAND)

**BRIEF OF DEFENDANTS/APPELLEES ROBERT KLINE, ESQ. AND
KLINE LAW OFFICES**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
I. STATEMENT OF THE CASE	7
A. Statement of facts: the underlying matter.....	7
B. Mr. Haskell’s Complaint and the present litigation.....	9
C. Summary judgment.....	10
II. STATEMENT OF ISSUES ON APPEAL.....	12
III. SUMMARY OF THE ARGUMENT	13
IV. ARGUMENT.....	15
A. Standard of review.....	15
B. The Business Court properly entered summary judgment on Mr. Haskell’s breach of fiduciary duty claim.....	15
i. The Business Court did not misapply <i>Garland</i> or <i>Deane</i>	16
ii. The Business Court properly concluded that Mr. Haskell’s emotional distress is not “severe”.....	19
iii. Attorney Kline’s conduct is not egregious.....	21
iv. Mr. Haskell failed to state a prima facie case for causation.....	25
C. The Business Court properly entered summary judgment on Mr. Haskell’s intentional infliction of emotional distress claim (Count 3) and negligent infliction of emotional distress claim (Count 4).....	28
i. The law on severe emotional distress.....	29

ii.	The Business Court correctly found that Mr. Haskell’s emotional distress is legally insufficient to satisfy either his IIED or NIED claim.....	31
iii.	The Business Court did not improperly elevate the outrageous standard.....	33
iv.	The sporadic unpublished and sister state authority Mr. Haskell points to does not require a different result than the one reached by the Business Court.....	38
v.	Mr. Haskell distress is not such that a reasonable person normally constituted would be unable to adequately cope with it.....	41
D.	Attorney Kline’s conduct is not “extreme and outrageous”.....	41
CONCLUSION.....		43
CERTIFICATE OF SERVICE.....		44

TABLE OF AUTHORITIES

CASES:

<i>Angelica v. Drummond Woodsum & MacMahon, P.A.,</i> No. CIV.A. CV-02-15, 2003 WL 22250354 (Me. Super. Sept. 9, 2003).....	42
<i>Argereow v. Weisberg,</i> 2018 ME 140, 29,195 A.3d 1210.....	31
<i>Bell v. Clark,</i> 653 N.E.2d 483, 491 (Ind. Ct. App. 1995), opinion adopted, 670 N.E.2d 1290 (Ind. 1996).....	41
<i>Berry v. WorldWide Language Res., Inc.,</i> 716 F. Supp. 2d 34, 53 (D. Me. 2010).....	42
<i>Brooks v. Lemieux,</i> 2017 ME 55, 157 A.3d 798.....	28
<i>Carter v. Williams,</i> 2002 ME 50, 792 A.2d 1093.....	41
<i>Champagne v. Mid-Maine Med. Ctr.,</i> 1998 ME 87, 711 A.2d 842.....	18, 29, 40, 42
<i>Corey v. Norman, Hanson & DeTroy,</i> 1999 ME 196, 742 A.2d 933.....	25, 27
<i>Crocker Cirque II, LLC v. Abbondanza,</i> 2019 Me. Super. LEXIS 38 (Me. Super. Ct. Mar. 1,2019).....	17
<i>Curtis v. Porter,</i> 2001 ME 158, 784 A.2d 18.....	15, 17, 29, 41, 43
<i>Deane v. Cent. Maine Power Co.,</i> 2024 ME 72, 322 A.3d 1223.....	<i>Passim</i>

<i>Devine v. Roche Biomed. Labs., Inc.</i> , 637 A.2d 441, 447 (Me. 1994).....	29
<i>Est. of Cilley v. Lane</i> , 2009 ME 133, 985 A.2d 481.....	18
<i>Fleming v. Gardner</i> , 658 A.2d 1074 (Me. 1995).....	18
<i>Garland v. Roy</i> , 2009 ME 86, 976 A.2d 940.....	<i>Passim</i>
<i>Hoffman v. Goltz</i> , 2016 Me. Super. LEXIS 41 (Me. Super. Ct. Mar. 4, 2016).....	17, 22
<i>Johnson v. Carleton</i> , 2001 ME 12, 765 A.2d 571.....	27, 28
<i>Latremore v. Latremore</i> , 584 A.2d 626 (Me. 1990).....	36
<i>Lyman v. Huber</i> , 2010 ME 139, 10 A.3d 707.....	<i>Passim</i>
<i>Mehlhorn v. Derby</i> , 2006 ME 110, 905 A.2d 290, 293.....	39
<i>Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.</i> , 2021 ME 24, 250 A.3d 122.....	15
<i>Merriam v. Wanger</i> , 2000 ME 159, 757 A.2d 778.....	25, 27
<i>Niehoff v. Shankman & Assocs. Legal Ctr., P.A.</i> , 2000 ME 214, 763 A.2d 121.....	25, 26
<i>Northern Mattress Co. v. Bernstein Shur</i> , No. BCD-WB-CV-09-07.....	38

<i>Perez v. Kirk & Carrigan</i> , 822 S.W.2d 261 (Tex. App. 1991), writ denied (July 1, 1992).....	39,40
<i>Reppucci v. Nadeau</i> , 2020 ME 114, 238 A.3d 994.....	26
<i>Schelling v. Lindell</i> , 2008 ME 59, 942 A.2d 1226.....	20, 30, 35
<i>Stanley v. Richmond</i> , 35 Cal. App. 4th 1070, 41 Cal. Rptr. 2d 768, 784 (1995).....	40
<i>Thorton v. Squyres</i> , 317 Ark. 374, 877 S.W.2d 921 (1994).....	24
<i>Toto v. Knowles</i> , 2021 ME 51, 261 A.3d 233.....	25
<i>Town of Stonington v. Galilean Gospel Temple</i> , 1999 ME 2, 722 A.2d 1269.....	41
<i>Vicnire v. Ford Motor Credit Co.</i> , 401 A.2d 148, 150–51 (Me. 1979)	30, 34,36,37
<i>Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc.</i> , 2021 ME 65, 264 A.3d 1248, 1251.....	25

OTHER AUTHORITY:

Restatement (Second) of Torts § 46.....	14, 34, 36, 37
Restatement (Third) of Torts § 46.....	30

I. STATEMENT OF THE CASE.

A. Statement of facts: the underlying matter.

This is a legal malpractice case. Attorney Robert W. Kline, Esq. (“Attorney Kline”) and Kline Law Offices (collectively, the “Kline Defendants”) represented Appellant Jeffery Haskell (“Mr. Haskell”) against a November 2020 lawsuit brought against Mr. Haskell by his former employer, General Linen (“GL”). Appendix (“App.”) 65, 165-166. That lawsuit alleged Mr. Haskell was violating restrictive covenants by working for Pratt Abbott (“Pratt”), a GL competitor (hereafter, the “Underlying Matter”). *Id.* The initial lawsuit was brought just against Mr. Haskell and Pratt engaged Attorney Kline to defend him. App. 65, 166.¹

At inception, Mr. Haskell spoke to Thomas Gridley (“Mr. Gridley”), at the time the General Manager of Pratt, regarding who would be responsible for Mr. Haskell’s legal fees, but did not discuss with Mr. Gridley what would happen regarding his legal fees if he stopped working at Pratt. App. 65, 166.

Prior to 2020, Pratt and GL had established a protocol to resolve allegations of wrongdoing in connection with the hiring of the other company’s employees and alleged breach of restrictive covenants ultimately through mediation (the “Protocol”). App. 65, 166. Accordingly, on December 21, 2020, Attorney Kline filed

¹ In his recitation of the facts, Mr. Haskell suggests “at the same time” Attorney Kline was retained to represent Mr. Haskell, Attorney Kline “represented Haskell’s employer in matters directly adverse to Haskell’s interests.” Blue Br. 5. That is not true and the broad citation Mr. Haskell offers does not support that averment. *See* Blue Br. citing App. 165-197; *compare* App. 234.

a motion to dismiss the Underlying Matter without prejudice to permit the parties to mediate pursuant to the Protocol. App. 65, 166-167. The motion was initially denied because Pratt was not a party and Mr. Haskell did not have technical standing to assert the Protocol. App. 65-66, 167. Thereafter, Attorney Kline filed a motion for Pratt to intervene and stay proceedings so the parties could mediate pursuant to the Protocol. App. 66, 167. On March 26, 2021, Pratt's motion to intervene and the first of three orders compelling GL to mediate pursuant to the Protocol was granted. App. 66, 167.

Mr. Haskell's last day of employment at Pratt was June 4, 2021. App. 66, 167. As he was no longer an employee, Pratt declined to continue paying Mr. Haskell's legal expenses. App. 66, 167.

On June 8, 2021, Attorney Kline sent Mr. Haskell an email attaching two letters. The first addressed Attorney Kline's suggestions on how to get Mr. Haskell dismissed from the case and then for Attorney Kline to withdraw. The second was an engagement letter for Mr. Haskell to directly retain Attorney Kline. App. 66, 168.

After June 8, 2021, Attorney Kline continued to represent Mr. Haskell. App. 66-67, 168. On July 9, 2021, Attorney Kline filed an Objection to GL's Motion for an Enlargement for Joinder of Parties and Amendment of Pleadings, arguing, among other things, that the underlying claim against Mr. Haskell was mooted by his separation from Pratt. App. 66-67, 168. On July 30, 2021, Attorney Kline filed an

objection to GL's Motion to Amend to join a New Defendant, in which he argued, among other things, that the underlying litigation should be dismissed in light of Mr. Haskell's separation. App. 67, 168.

Mr. Haskell retained successor counsel, Attorney Jeffrey Bennett ("Attorney Bennett") on or about October 15, 2021. App. 67, 168. Mr. Haskell's successor counsel filed crossclaims against Pratt on or about November 2, 2021. App. 67, 169. Attorney Kline filed an answer on behalf of Pratt to Mr. Haskell's crossclaims on November 18, 2021. App. 67, 169.

After Pratt's answer was filed, Attorney Bennett inquired about the propriety of Attorney Kline continuing to represent Pratt and, in turn, Attorney Kline inquired whether Mr. Haskell consented to Kline's continued representation of Pratt. App. 67-68, 169-179. Mr. Haskell declined to provide his consent on December 8, 2021. App. 68, 170. Attorney Kline then arranged for the services of replacement counsel and withdrew from representing Pratt. App. 68, 170. The Underlying Matter was settled at mediation in March of 2022, and Pratt made a settlement payment that covered Mr. Haskell's legal fees. App. 68, 170.

B. Mr. Haskell's Complaint and the present litigation.

Mr. Haskell sued the Kline Defendants on December 9, 2022, asserting an array of claims, including for breach of fiduciary duty (Count 1), negligence or professional negligence (Count 2), intentional infliction of emotional distress

(“IIED”) (Count 3), negligent infliction of emotional distress (“NIED”) (Count 4), and for violation of the Maine Unfair Trade Practices Act (“UTPA”) (Count 5). App. 68-68, 171.

As the case wore on, however, Mr. Haskell’s description of the relief he sought morphed. In the words of the Business Court:

In the present litigation, during Kline’s efforts to disqualify Haskell’s counsel on the grounds that they are likely to become witnesses, Haskell significantly narrowed his claim. He withdrew any litigation related claim that Kline’s representation made the litigation more costly, or compromised Haskell’s ultimate settlement with General Linen. Haskell is only claiming damages for his emotional distress and punitive damages. The case is no longer about Kline’s handling of the case, only the emotional impact on Haskell of the alleged failure to disclose conflicts and the subsequent conduct after Kline [sic Haskell] was terminated.

App. 43 (citing December 16, 2024, Order on Motion to Compel).

C. Summary judgment.

On July 29, 2025, the Kline Defendants moved for summary judgment. App. 11. In response to that motion, Mr. Haskell withdrew agreed to summary judgment on his professional negligence claim (Count 2) and his UTPA claim (Count 5), leaving just his breach of fiduciary duty, IIED, and NIED claims. App. 14.

By order dated December 4, 2025, the Business Court granted the Kline Defendants’ motion for summary judgment, concluding that, “[w]ith respect to the remaining claims, the court concludes that Plaintiff has no damages claim that

survives summary judgment on Count I” and that “[o]n Counts III and IV, the Plaintiff has insufficient evidence of severe emotional distress.” App. 14.

Upon examining the undisputed summary judgment record and Mr. Haskell’s claim for severe emotional distress, the Business Court determined:

In his interrogatories and deposition, Plaintiff stated he suffered “extreme anxiety, anxiousness, depression, sleep disturbances, stomach pains, headaches, frustration, and anger.” He “exhausted his wife’s resources,” and said he was “ashamed” and at the “lowest point in his life,” and so did not confide in many people. He did not seek medical or mental health treatment, did not provide any medical or mental health records, and was not prescribed medication for these symptoms. He was not diagnosed with anxiety, anxiousness, depression, or sleep disturbances by any mental health or other medical provider. He could not pinpoint when his anxiety, anxiousness, depression, sleep disturbances, stomach pain, or headaches commenced or how frequently they occurred. He identified certain physical symptoms, including: lack of sleep, lack of motivation, feelings of hopelessness, lack of direction, effects on his marriage, and stomach and head pain of unspecified frequency and duration. He did not recall any nausea and did not experience any vomiting.

App. 16; *see also* App. 70-75, 173-179.

In his brief to this Court, Mr. Haskell recites the Business Court’s analysis of the nature of Attorney Kline’s conduct with an advocate’s relish, but without regard for the findings the Business Court in fact made. Mr. Haskell repeatedly states that the Business Court affirmatively determined that Attorney Kline “violated the highest duties imposed by law of loyalty, fidelity, and candor,” engaged in “fiduciary misconduct,” and that the Business Court determined that Mr. Haskell’s alleged emotional harm was “caused directly from that attorney misconduct.” Blue Br. 8-15.

The Business Court did not make those findings. Rather, taking all reasonable inferences in Mr. Haskell's favor, the Business Court remarked that "[i]n essence, if a jury accepts these facts, as well as some other issues raised by Plaintiff, **a jury could conclude that Plaintiff had reason to believe** that Defendant, a regular attorney for Pratt Abbott, worked against Plaintiff while Defendant was still Plaintiff's attorney and abandoned him during the litigation." App. 18-19 (emphasis added); *see also* App. 20 (Defendant's conduct, **as presented by Plaintiff**, violated his obligations of loyalty to his client and presented a conflict of interest) (emphasis added). From there, the Business Court went on to correctly hold that Attorney Kline's conduct did not "rise to the level of outrageousness that would imply the infliction of severe emotional distress." App. 20.

Mr. Haskell then timely appealed.²

II. STATEMENT OF ISSUES ON APPEAL.

(1) Did the Business Court err in ruling there was insufficient evidence that Mr. Haskell suffered emotional distress so severe that no reasonable person could endure it, where the undisputed summary judgment record demonstrated that Mr. Haskell did not seek any treatment for his alleged distress, was not diagnosed with any medical or mental health condition, was prescribed no medications, could not

² Mr. Haskell has not appealed the Business Court's ruling on his wage claim. App. 14-15.

pinpoint the duration or frequency of his alleged distress, and had no medical expert testimony to support his claims?

(2) Did the Business Court err in ruling that Attorney Kline's conduct was not so egregious or extreme and outrageous to permit an inference of severe emotional distress, recognizing that this Court has never decided a case in which the nature of the extreme and outrageous conduct alone was enough to do so?

III. SUMMARY OF THE ARGUMENT.

Mr. Haskell offers four grounds for appeal, namely that: (1) the Business Court misapplied this Court's holdings in *Garland v. Roy*, 2009 ME 86, 976 A.2d 940 and *Deane v. Cent. Maine Power Co.*, 2024 ME 72, 322 A.3d 1223 by weighing severity and egregiousness after finding evidence of both; (2) *Deane* is materially distinct because the case at bar involves what Mr. Haskell has framed as blatant attorney betrayal, not generalized economic anxiety; (3) the Business Court improperly elevated the outrageousness standard and misapplied *Lyman v. Huber*, 2010 ME 139, 10 A.3d 707, and last that (4) Maine and national authorities confirm that the case should have been presented to a jury.

None of these grounds has merit.

First, in granting summary judgment to the Kline Defendants, the Business Court followed settled Maine law, including this Court's decisions in *Garland* and *Deane*. Summary judgment is no mere check the box exercise. Trial courts take their

gatekeeper roles seriously, and at summary judgment, it is for the trial court to first determine whether, as a matter of law, the facts alleged are sufficient to satisfy the elements of the claims asserted. To survive summary judgment, it was Mr. Haskell's burden to establish each element of his claims, including that he suffered severe, not just some, emotional distress, viz., emotional distress so severe that no reasonable person could be expected to endure it or that Attorney Kline's conduct was so egregious or extreme and outrageous that emotional distress could be inferred. On this record, the Business Court correctly found he failed to do so, compelling summary judgment to the Kline Defendants on each remaining claim.

Second, far from being irrelevant, *Deane* is instructive on what a plaintiff must demonstrate at summary judgment to meet his burden under the fourth element of an IIED claim. And the evidence of emotional distress allegedly suffered by Mr. Haskell here is even weaker than that of the plaintiffs in *Deane*.

Third, this Court has *never* decided a case where the nature of the conduct alone was sufficient to satisfy the element of severe emotional distress. In determining that the conduct here did not reach that extraordinary level, the Business Court properly applied *Lyman* and, in its reasoning, did not err in relying on the illustrations to the Restatement (Second) of Torts § 46, Comment K, illustrations this Court has also relied on multiple times in analogous cases.

Finally, the unpublished and sister state authority Mr. Haskell points to do not require a different result than that reached by the Business Court.

IV. ARGUMENT.

A. Standard of review.

This Court “review motions for summary judgment for errors of law, viewing the evidence in the light most favorable to the nonprevailing party ... to determine whether the record supports the conclusion that there is no genuine issue of material fact and that the prevailing party is entitled to a judgment as a matter of law.” *Curtis v. Porter*, 2001 ME 158, ¶ 6, 784 A.2d 18. “When, as here, a defendant moves for summary judgment, the plaintiff must establish a prima facie case for each element of [the] cause of action that is properly challenged in the defendant's motion.” *Id.* ¶ 8 (quotation marks omitted). This Court “first determine[s] the elements of the causes of action at issue and then review[s] the facts set forth in the parties’ statements of material facts that are supported by appropriate record references. Uncontroverted facts are accepted as true for the purpose of testing the propriety of a summary judgment.” *Id.* (footnote and citation omitted).

B. The Business Court properly entered summary judgment on Mr. Haskell’s breach of fiduciary duty claim.

Count 1 in Mr. Haskell’s Complaint asserted a claim for breach of fiduciary duty. *See, e.g., Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 12, 250 A.3d 122 (reciting elements).

This Court has been clear that in cases brought by clients against their lawyers for legal malpractice, whether the claims are cast as professional negligence claims or claims for breach of fiduciary duty, damages for emotional distress are available only when the emotional distress is “severe” and when the attorney’s conduct is “egregious.” *Garland*, 2009 ME 86, ¶ 24, 976 A.2d 940. Mr. Haskell failed to meet his burden here.

i. The Business Court did not misapply Garland or Deane.

Contrary to Mr. Haskell’s first argument, nothing in *Garland* or *Deane* intimates that if a trial court finds some evidence of emotional distress or some potential attorney misconduct then “whether the distress was sufficiently severe, or the conduct sufficiently egregious for the distress to be inferred” is necessarily “for the jury.” See Blue Br. 9-10. (stating both cases describe a “threshold inquiry, not a weighing of degree,” and require that “[w]here reasonable minds could differ, the issue must be submitted to the jury.”).

As to *Garland*, first, it is not a summary judgment case as Mr. Haskell’s brief seems to imply. Blue Br. 9. In any event, Mr. Haskell did not argue below and does not argue in his opening brief that for emotional harm to be compensable in this context, he must show anything less than “severe” emotional distress. *Garland*, 2009 ME 86, ¶ 24, 976 A.2d 940; *see also* Blue Br. 8 (conceding that *Garland* requires egregious conduct and severe distress).

Nor does Mr. Haskell dispute (nor did he at summary judgment) the proposition that to answer the question of whether emotional distress is “severe” enough to permit recovery in a claim for breach of fiduciary duty against an attorney, courts, as the Business Court did, apply the same analysis as the emotional distress prong in an IIED claim. *See* App. 15 (“In their briefing, both parties accept that the determination of whether emotional distress is “severe” is the same for a case based on the attorney client relationship as a case based on IIED or NIED.”); *see also Crocker Cirque II, LLC v. Abbondanza*, 2019 Me. Super. LEXIS 38, at *8 (Me. Super. Ct. Mar. 1, 2019) (citing *Curtis*, 2001 ME 158, ¶ 10, 784 A.2d 18 for the proposition that severe emotional distress arising out of a malpractice action means “emotional distress so severe that ‘no reasonable person could be expected to endure it.’”) *Hoffman v. Goltz*, 2016 Me. Super. LEXIS 41, at *11 (Me. Super. Ct. Mar. 4, 2016) (same).³

To be sure, “[w]ith regard to every motion for summary judgment, the trial court acts as a gatekeeper.” *Deane*, 2024 ME 72, ¶¶ 40-41, 322 A.3d 1223, 1236–37. “In carrying out this gatekeeping function, a court maintains a high bar in IIED claims because of the open-ended nature of this claim and the wide range of behavior to which it might plausibly apply.” *Id.* (cleaned up). “The court’s screening role is

³ To the extent that Mr. Haskell’s brief can be interpreted to inferably argue that evidence of some ethical violation or even mere negligence is sufficient to meet his burden under *Garland* at summary judgment, that is incorrect. *Garland* stands for the markedly different proposition that egregious conduct is required in these circumstances.

important here because of the high threshold imposed by the tort, which encompasses only the most extreme cases, and the frequent employment of this tort as a supplement to other claims.” *Id.* (cleaned up).

Mr. Haskell’s argument misunderstands the interplay between the court’s gatekeeping function and a litigant’s burden at summary judgment. Attacked by a motion for summary judgment, it was Mr. Haskell’s burden to establish a prima facie case for **each element** of his cause of action. *See, e.g., Est. of Cilley v. Lane*, 2009 ME 133, ¶ 10, 985 A.2d 481, 485. Damages are a necessary element. *Fleming v. Gardner*, 658 A.2d 1074, 1077 (Me. 1995). That is no mere check-the-box exercise. Rather, “while the jury must determine whether the elements of the tort were in fact satisfied, **the court must first determine whether, as a matter of law, the facts alleged are sufficient to satisfy the elements.**” *Champagne v. Mid-Maine Med. Ctr.*, 1998 ME 87, ¶ 16, 711 A.2d 842 (emphasis supplied).

Here, given the nature of his claims, to survive summary judgment it was Mr. Haskell’s burden to establish, *inter alia*, that he suffered **severe emotional distress**, viz., emotional distress so severe that no reasonable person could be expected to endure it or that Attorney Kline’s conduct was so extreme and outrageous that emotional distress could be inferred. He failed to do so. App. 16-20.

Mr. Haskell’s contention that the Business Court went beyond the pale of accepted summary judgment practice by determining on “a paper record that the

emotional distress” was not severe enough to permit recovery as a matter of law, see Blue Br. 10, is not correct and directly contradicted by the very case he cites to support his argument. *Compare* Blue Br. 9 (citing *Deane*) with *Deane*, 2024 ME 72, ¶¶ 52, 58 (acknowledging that Plaintiffs suffered some distress but affirming trial court’s summary judgment determination that, as a matter of law, Plaintiffs did not manifest the degree, duration, or type of symptoms that would satisfy the severe emotional distress element required to establish a claim for IIED, and further affirming that the trial court did not err in determining that “severe emotional distress cannot be inferred from CMP’s extreme or outrageous conduct.”).

The Business Court did not err.

ii. *The Business Court properly concluded that Mr. Haskell’s emotional distress is not “severe.”*

The Business Court correctly concluded, based on the summary judgment record, that Mr. Haskell failed to establish that his (alleged) emotional distress was the type of severe emotional distress that is compensable in this context.

The undisputed record reveals that: (1) Mr. Haskell did not seek any medical treatment for his alleged emotional distress (App. 70-75, 172-179); (2) Mr. Haskell did not seek any mental health treatment for his alleged emotional distress (App. 70-75, 172-179); (3) Mr. Haskell was not diagnosed with any condition or ailment related to his claims in this case (App. 70-75, 172-179); and (4) Mr. Haskell was not

prescribed any medication that he contends is associated with his claim for emotional distress damage (App. 70-75, 172-179).

Instead, all that Mr. Haskell was able to proffer is that he allegedly suffered from generalized anxiety, anxiousness, depression, headaches, loss of sleep, and stomach pain. All of which, however, Mr. Haskell admitted, he self-diagnosed and none of which Mr. Haskell described or recalled with any specificity, including when the alleged ailments started, stopped, or what, specifically, they entailed. App. 70-75, 172-179.

The case law makes clear that the type of stress, loss of sleep, minor physical ailments, and anxiety experienced by Mr. Haskell are those occasioned by the happenings of everyday life and thus endurable and, although unpleasant, those feelings do not constitute the type of “severe emotional distress” necessary to underlie a damage award. *See Schelling v. Lindell*, 2008 ME 59, ¶ 26, 942 A.2d 1226; *see also Lougee Conservancy*, 2012 ME 103, ¶¶ 8, 26, 48 A.3d 774.

As the Business Court properly found, Mr. Haskell described “some emotional distress.” App. 18. Some emotional distress is not severe emotional distress. That is, the bare fact that Mr. Haskell experienced some emotional distress is not enough to meet his burden at summary judgment, i.e., the amount of “actual emotional distress as described by ... [Mr. Haskell] and his wife” was “not so severe that no reasonable person could be expected to endure it.” App. 18.

iii. *Attorney Kline’s conduct is not egregious.*

Even assuming for the sake of argument that Mr. Haskell established, on the record below, that he suffered severe emotional distress, Attorney Kline’s conduct was not egregious.

In *Garland*, this Court indicated that qualifying conduct might include “situations where the tort was intentional . . . and/or when the attorney has been untruthful with his clients or has wantonly or willfully disregarded the consequences of his or her actions.” *Id.* ¶ 26 (collecting cases from other jurisdictions and stating that the Court’s egregious-conduct holding was in accord); *see also Abbondanza*, 2019 Me. Super. LEXIS 38, at *8 (“Based on the unforeseeability of emotional distress damages resulting from an economic loss, the Law Court has determined such damages are unavailable unless the tort was intentional, when the attorney has been untruthful with clients, or when the attorney wantonly or willfully disregards the consequences of his actions.”) (citing *Garland*).

Maine courts frequently dispatch claims against attorneys that do not meet this demanding standard. In *Garland*, this Court found there was no egregious conduct when the attorney waived retrial on an adverse possession claim without his clients’ input or approval and agreed to have the court decide the claim on the evidence in the record from the first trial, knowing that the evidence was “excellent” for the opposing party’s adverse possession claim, that his own client had testified

incorrectly about key dates, and that there were additional witnesses to testify against the adverse possession claim. 2009 ME 86, ¶¶ 8, 9, 26, 976 A.2d 940.

In *Abbondanza*, the trial court granted summary judgment on professional negligence and breach of fiduciary duty claims for failure to raise “an issue of material fact regarding egregious conduct on the part of defendants.” 2019 Me. Super. LEXIS 38, at *8. There, plaintiffs claimed a laundry list of the law firm’s alleged failings in advising the clients regarding the timing of their right to declare additional condominium units and the failure to “advise plaintiffs that they should not proceed with the new phase of construction in light of the expiration of their declarant rights.” *Id.* at *4.

In another case, an attorney hired a client, who was a contractor, to perform work on his home, and, when disputes arose, refused to pay the client and “berated [the client] in an attempt to bully and intimidate her.” *Hoffman*, 2016 Me. Super. LEXIS 41, *8. The client also sought to prove that she had “requested [the attorney] to prepare construction contracts, that he neglected to do that, and that he sought to use the absence of such contracts to [the client’s] disadvantage in this dispute.” *Id.* at *12. And, she sought to prove that the attorney had learned, during his representation of her, that she was in a relationship with a business associate, and that the attorney sued the business associate to put pressure on her. *Id.* All of this, if true, “d[id] not rise to the level of egregiousness that would justify allowing

defendants to pursue damages for emotional distress” in the client’s breach of fiduciary duty claim. *Id.* at *13.

Without conceding but for the sake of argument taking Mr. Haskell’s claims at their worst, Attorney Kline is alleged to have failed to advise Mr. Haskell of any potential or actual conflict of interest in the dual representation of Mr. Haskell and Pratt; failed to obtain informed written consent to that joint representation; failed to accurately advise Mr. Haskell as to Pratt’s agreement or obligation to pay Mr. Haskell’s attorney’s fees, and failed to document that agreement; failed to advise Mr. Haskell to retain or confer with independent legal counsel; and improperly answered Mr. Haskell’s crossclaim on behalf of Pratt. App. 86-88; *see also* App. 19 (“In essence, if a jury accepts these facts, as well as some other issues raised by Plaintiff, a jury could conclude that Plaintiff had reason to believe that Defendant, a regular attorney for Pratt Abbott, worked against Plaintiff while Defendant was still Plaintiff’s attorney and abandoned him during the litigation.”). Such conduct, even if true in all regards, is not sufficiently egregious to permit recovery. *Garland*, 2009 ME 86, ¶ 26, 976 A.2d 940.

Mr. Haskell cites no Maine authority holding that the type of conduct at issue here has been found to constitute either ‘egregious’ conduct under *Garland* or “extreme and outrageous” conduct sufficient to sustain an IIED claim.

Thorton v. Squyres, which this Court cited in reaching its holding in *Garland*, is instructive. 317 Ark. 374, 877 S.W.2d 921 (1994). There, the plaintiff claimed that her attorney's malpractice was extreme and outrageous. 317 Ark. at 376. The attorney told his client he would file an answer to her husband's complaint of divorce, but then failed to do so, resulting in his client temporarily losing custody of her daughter. *Id.* at 375. The client's husband came to her home with a court order and the police and took her daughter from her home. *Id.* at 375. The plaintiff alleged her attorney intentionally failed to file an answer because he had not yet been paid for his services, knowing that his conduct could result in the loss of her child. *Id.* at 376-77. The plaintiff argued that in light of the fiduciary relationship existing between her and her attorney, his conduct could reasonably be regarded as extreme and outrageous. *Id.* at 376. The Arkansas Supreme Court rejected plaintiff's argument, finding that the alleged conduct did not rise to the level of extreme and outrageous behavior. *Id.* at 378.

If the conduct in *Thorton* did not rise to the level of extreme and outrageous, neither does the type of conduct complained of here, even viewing the evidence in the light most favorable to Mr. Haskell.

iv. Mr. Haskell failed to state a prima facie case for causation.

This Court “may affirm a summary judgment on alternative grounds from the trial court decision when we determine, as a matter of law, that there is another valid

basis for the judgment.” *Yankee Pride Transportation & Logistics, Inc. v. UIG, Inc.*, 2021 ME 65, ¶ 11, 264 A.3d 1248, 1251. In doing so, this Court may consider “the evidence and any reasonable inferences thereof in the light most favorable to the non-[moving] party,” *id.*, but it remains Mr. Haskell’s “burden to make out the prima facie case and demonstrate that there are disputed facts,” *Toto v. Knowles*, 2021 ME 51, ¶ 8, 261 A.3d 233.

Although the Business Court did not ground its summary judgment decision on this basis, this Court can alternatively affirm summary judgment on Mr. Haskell’s breach of fiduciary duty claim because Mr. Haskell failed to establish causation.

“Proximate cause exists in professional malpractice cases where ‘evidence and inferences that may reasonably be drawn from the evidence indicate that the negligence played a substantial part in bringing about or actually causing the injury or damage and that the injury or damage was either a direct result or a reasonably foreseeable consequence of the negligence.’” *Niehoff v. Shankman & Assocs. Legal Ctr., P.A.*, 2000 ME 214, ¶ 8, 763 A.2d 121 (quoting *Merriam v. Wanger*, 2000 ME 159, ¶ 8, 757 A.2d 778).

Generally, that test is understood to mean that in a legal malpractice action, a plaintiff must demonstrate that he or she would have achieved a more favorable result but for the defendant’s alleged legal malpractice. See *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶¶ 13-14, 742 A.2d 933, 940. Of this statement,

this Court has said: “that has been, and remains, the test for proving a claim of legal malpractice.” *Reppucci v. Nadeau*, 2020 ME 114, ¶ 21, 238 A.3d 994. “Without such proof, the existence of a causal connection between the negligent conduct and any damages is speculative or conjectural, and cannot support a judgment favorable to the plaintiff.” *Id.* That Mr. Haskell recast his claims during the litigation to sound solely in breach of fiduciary duty does, and did, not change the analysis. *Niehoff*, 2000 ME 214, at ¶ 8 (“The same rules of causation generally apply whether the cause of action sounds in contract, negligence, or breach of fiduciary duty.”)

Mr. Haskell failed to put forth prima facie evidence of causation for his breach of fiduciary duty claim for at least two reasons:

First, Mr. Haskell withdrew any claim that any action or inaction by Attorney Kline affected the substantive handling of the Underlying Matter, that a deficiency in Attorney Kline’s performance affected settlement negotiations in the Underlying Matter, or that Attorney Kline committed malpractice with respect to his substantive handling of the case or the subsequent transfer of the Underlying Matter. App.69-70, 171-172. That is, Mr. Haskell unequivocally withdrew any claim that any alleged breach by Attorney Kline resulted in a less favorable outcome than Mr. Haskell would have achieved had he been otherwise represented. *Id.* Those concessions doom Mr. Haskell’s breach of fiduciary duty claim as a matter of law. *See Niehoff*,

2000 ME 214, at ¶ 8 (same rules of causation apply to negligence and breach of fiduciary duty claims).

Second, “[s]ufficient evidence of proximate causation . . . is essential to proving professional negligence.” *Corey*, 1999 ME 196, at ¶ 12. Proximate cause requires a showing that “the evidence and inferences that may reasonably be drawn from the evidence indicate that the negligence played a substantial part in bringing about or actually causing injury or damage and that the injury or damage was either a direct result or a reasonably foreseeable consequence of the negligence.” *Merriam*, 2000 ME 159, at ¶ 8. The law requires proof of proximate causation through expert testimony when “the lack of expert evidence in regard to a different outcome absent [the lawyer’s] negligence makes the link between the negligent act and the alleged damage overly speculative.” *Id.* (quotation marks omitted); *see also Johnson v. Carleton*, 2001 ME 12, ¶ 12, 765 A.2d 571 (“[A plaintiff] must show more than a ‘mere possibility’ of proximate cause; evidence that requires speculation or conjecture by the factfinder entitles [the defendant] to judgment as a matter of law . . .”).

Here, Mr. Haskell designated no expert regarding his alleged emotional injuries. His sole expert, Joseph Goodman (“Mr. Goodman”), is an attorney. App. 75, 179. The undisputed record makes clear that Mr. Goodman is not a licensed medical provider, is not a licensed mental health provider, has no training in either

the medical or mental health fields, is not qualified to and could not diagnose any medical or mental health conditions, and reviewed no medical or mental health records. App. 75-76, 179-180. Simply put, Mr. Goodman could not testify to the proximate cause of any emotional injury suffered by Mr. Haskell due to the alleged conduct of Attorney Kline. Without expert testimony about Mr. Haskell's emotional injury and its cause, the factfinder would be left to "speculation or conjecture," which "entitles [Defendants] to judgment as a matter of law." *Johnson*, 2001 ME 12, at ¶ 12.

Accordingly, this Court can alternatively affirm summary judgment on Count 1 because Mr. Haskell failed to put forth prima facie evidence of causation.⁴

C. The Business Court properly entered summary judgment on Mr. Haskell's intentional infliction of emotional distress claim (Count 3) and negligent infliction of emotional distress claim (Count 4).

Mr. Haskell's IIED and NIED claims fare no better. To establish a claim for IIED, a plaintiff must show that "1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from ... [his] conduct; 2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrociously,

⁴ This too would provide an alternative ground to affirm summary judgment on Mr. Haskell's NIED claim. See *Brooks v. Lemieux*, 2017 ME 55, ¶¶ 6-7, 20 & n.4, 157 A.3d 798 ("Although the court focused on the legal malpractice claim, the court concluded that if Brooks could not produce prima facie evidence of causation as to that claim, the other derivative tort claims for breach of fiduciary duty and negligent infliction of emotional distress failed as well.").

utterly intolerable in a civilized society; 3) the actions of the defendant caused the plaintiff emotional distress, and 4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” *Champagne*, 1998 ME 87, at ¶ 15 (quotation marks omitted).

As to the NIED claim, a plaintiff must set forth facts from which it could be concluded that (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff was harmed; and (4) the breach caused the plaintiff’s harm. *Devine v. Roche Biomed. Labs., Inc.*, 637 A.2d 441, 447 (Me. 1994). In addition, “a negligent infliction claim requires proof of severe emotional distress.” *Curtis*, 2001 ME 158, at ¶ 20.

i. The law on severe emotional distress.

The claim of IIED requires proof that “the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” *Champagne*, 1998 ME 87, at ¶ 15 (quotation marks omitted). “[S]evere emotional distress may be satisfied two ways—either by proof of objective symptomatology or by inference based on the extreme and outrageous nature of the defendant’s conduct.” *Deane*, 2024 ME 72, at ¶ 44.

“To establish severe emotional distress based on objective symptomatology, a plaintiff must do more than prove that the emotional distress he or she suffered was serious.” *Deane*, 2024 ME 72, at ¶ 45. Emotional distress that qualifies as severe

is that which is extremely intense, such as shock, illness, or other bodily harm.” *Id.* (internal quotations omitted). “The intensity and the duration of the harm are factors to be considered in determining its severity.” *Id.* (quoting Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 46 cmt. j.). “In most instances, proof of objective symptoms will require expert testimony to establish that the plaintiff’s emotional injury qualifies for a diagnosis such as shock, post-traumatic stress disorder, or some other recognized medical or psychological disease or disorder.” *Id.* ¶ 47 (quoting *Lyman*, 2010 ME 139, ¶ 23, 10 A.3d 707). “This standard prevents recovery for emotional injuries that are anything less than severe.” *Id.* (cleaned up).

Absent proof of objective symptomology, “[a]n inference of severe emotional harm is available only in the very narrow circumstance where the conduct is so extreme and outrageous that no reasonable person could endure the emotional response the conduct would naturally generate.” *Id.* ¶ 56 (quotation marks omitted). However, this Court has “not yet decided a case in which the nature of the extreme and outrageous conduct alone was enough to satisfy the element of severe emotional distress.” *Id.* ¶ 55.

As explained above, “[s]tress, humiliation, loss of sleep, and anxiety occasioned by the events of everyday life are endurable” and therefore insufficient. *Schelling*, 2008 ME 59, at ¶ 26; *see also Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148, 150-151 (Me. 1979) (concluding that feeling “kind of down,” “mad,” and

“nervous for about a month” after a creditor requested payment and later repossessed plaintiff’s vehicle was not so severe that no reasonable person could be expected to endure it); *Lougee Conservancy*, 2012 ME 103, at ¶¶ 8 (concluding that feelings of upset and defeat leading to ten months of counseling were not substantial enough to qualify as severe emotional distress); *Argereow v. Weisberg*, 2018 ME 140, ¶¶ 8, 29, 195 A.3d 1210, 1219 (stating that plaintiff’s allegation that defendant’s conduct caused enough stress to require marriage counseling was not enough to support a claim for IIED).

ii. The Business Court correctly found that Mr. Haskell’s emotional distress is legally insufficient to satisfy either his IIED or NIED claim.

Just as the Business Court correctly determined that Mr. Haskell’s emotional distress was legally insufficient to support his claim for breach of fiduciary duty, so too did the Business Court correctly find that his distress was insufficient to support his claims for IIED and NIED.

In a variation of an earlier argument, Mr. Haskell contends that *Deane* is “materially distinct” because “the plaintiffs’ emotional distress arose from fear of a potential utility shutoff and related financial uncertainty.” See Blue Br. 10-11.

In *Deane*, this Court upheld the grant of summary judgment on the plaintiffs’ IIED claim when the plaintiffs reported feelings of stress, anxiety, depression, “sleepless nights,” fear, dread, inability to eat more than “crackers for a few days,” fear for their children, families, and farm animals, disruptions in their sexual

relationships, and a racing heart. 2024 ME 72, at ¶¶ 48-50. One of the plaintiffs “discussed his anxiety with his therapist.” *Id.* at ¶ 50. Another incurred over \$4,500 in expenses to move his family out of the home for fear they’d lose their power during the winter. *Id.* at ¶ 48. And, the plaintiffs “offered an affidavit of a clinical psychologist who averred that Plaintiffs had suffered ‘severe emotional distress.’” *Id.* at ¶ 51. Even with that evidence in the record, this Court held that “the trial court did not err in determining that, as a matter of law, Plaintiffs did not manifest the degree, duration, or type of symptoms that would satisfy the severe emotional distress element required to establish a claim for IIED.” *Id.* at ¶ 52.

Far from being irrelevant, *Deane* is instructive as to what a plaintiff must demonstrate at summary judgment to meet his burden under the fourth element of an IIED claim. And the evidence of emotional distress allegedly suffered by Mr. Haskell here is even weaker than that in *Deane*. As described above, Mr. Haskell did not seek any medical treatment for his alleged emotional distress (App. 70-75, 172-179); (2) Mr. Haskell did not seek any mental health treatment for his alleged emotional distress (App. 70-75, 172-179); (3) Mr. Haskell was not diagnosed with any condition or ailment related to his claims in this case (App. 70-75, 172-179); (4) Mr. Haskell was not prescribed any medication that he contends is associated with his claim for emotional distress damage (App. 70-75, 172-179); (5) Mr. Haskell has failed to offer any documentation, much less specific documentation, in support of

his alleged emotional distress damages (App. 70-75, 172-179); and (6), as the Business Court pointed out, Mr. Haskell could not pinpoint when his alleged anxiety, anxiousness, depression, sleep disturbances, stomach pain, or headaches commenced or how frequently they occurred. App. 16.

Moreover, despite his efforts in his brief to brush aside the “generalized economic anxiety” the *Deane* plaintiffs described, so too did Mr. Haskell describe economic anxiety related to losing his job. App. 71.

Simply put, on this record, Mr. Haskell failed to present sufficient evidence to prove that he has suffered distress so severe that no reasonable person could be expected to endure it. Indeed, Mr. Haskell seems to have endured, given that he sought no medical or mental health treatment and took no medication for his symptoms. With respect, the generalized anxiety, anxiousness, depression, headaches, loss of sleep, and stomach pain Mr. Haskell points to — all of which are vague complaints— are nearly identical, if not less compelling, than those claimed by the plaintiffs in *Deane*, which this Court held were insufficient to sustain an IIED claim. *Compare* 2024 ME 72, ¶¶ 48-50, 322 A.3d 1223 with App. 70-75, 172-179.

iii. The Business Court did not improperly elevate the outrageous standard.

Next, Mr. Haskell contends that “the trial court elevated the outrageousness standard beyond Maine law by relying on [the] Restatement illustrations involving threats to life or liberty and reasoning that Plaintiff’s distress did not rise to that

level.” See Blue Br. 11. That contention is without merit. As this Court observed in *Deane*,

In *Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148, 154 (Me. 1979), we adopted the rule of liability stated in the Restatement (Second) of Torts, noting: Although “severe” emotional distress is usually manifested by “shock, illness or other bodily harm,” such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional, as opposed to negligent, infliction of emotional distress. Restatement (Second) of Torts § 46, Comment K. In appropriate cases, “severe” emotional distress may be inferred from the “extreme and outrageous” nature of the defendant’s conduct alone.

2024 ME 72, at ¶ 53.

As this Court went on to explain in *Deane*, in both *Vicnire* and later *Lyman*, this Court “relied on the Restatement (Second) of Torts § 46, Comment K” *Id.* The illustrations that the Business Court relied on at summary judgment are the illustrations to Comment K and are the same illustrations this Court pointed to in *Deane*. *Id.* ¶ 55 n. 13 (“Two examples in the Restatement (Second) of Torts illustrate how extreme the nature of the conduct must be to support an inference of severe emotional distress”). The Business Court did not err in relying on the same illustrations this Court has previously relied on from a portion of the Restatement (Second) of Torts that this Court has expressly adopted.

Mr. Haskell also contends that the Business Court misapplied *Lyman* “by treating the absence of medical treatment or expert testimony as effectively

dispositive,” advancing that “*Lyman* does not establish a categorical requirement of expert proof.” Blue Br. 12.

In *Lyman*, this Court did in fact hold that “[i]n most instances, proof of objective symptoms ***will require expert testimony*** to establish that the plaintiff’s emotional injury qualifies for a diagnosis such as shock, post-traumatic stress disorder, or some other recognized medical or psychological disease or disorder.” 2010 ME 139, ¶ 23, 10 A.3d 707 (emphasizing that the possibility of establishing the fourth element of emotional distress without expert testimony “is [] remote”) (emphasis supplied). That logic applies here, as Mr. Haskell was unable to generate such evidence. App. 16-18.

That aside, in its summary judgment order, the Business Court did not treat *Lyman* as establishing “a categorical requirement of expert proof.” Blue Br. 12. The Business Court’s analysis of *Lyman* was this:

Lyman provides a helpful comparison. There, the plaintiff described “feeling inadequate and withdrawn, socially paralyzed, and fearful and intimidated” due to the defendant’s conduct. *Id.* ¶ 24. Her friends also described her as being, at times, “guarded, jumpy, and withdrawn,” “shaken,” and “tense, afraid and on edge.” *Id.* The Law Court reasoned that, although the plaintiff proved intermittent symptoms associated with her emotional distress, she nonetheless continued to meet the demands of daily living and never sought treatment from medical or mental health professionals. *Id.*

This case is similar to *Lyman* or *Schelling*. Plaintiff describes some emotional distress. It impacted his life and is more than minor. If a client places trust in an attorney and there is evidence, as there is here, that the attorney acted against the client’s interest in favor of the

codefendant employer who terminated Plaintiff during the joint representation, then some degree of emotional distress is expected. The amount of actual emotional distress as described by Plaintiff and his wife, however, is not “so severe that no reasonable person could be expected to endure it.” *Lyman v. Huber*, 2010 ME 139, ¶ 20, 10 A.3d 707 Therefore, the severity of the emotional distress is not sufficient to avoid summary judgment.

App. 17-18.

The Business Court did not treat “the absence of treatment or expert proof as dispositive,” see Blue Br. 12, but, to the contrary, considered it as a factor in the analysis and thoroughly compared the record evidence of distress Mr. Haskell offered to controlling precedent and determined that it was insufficient to avoid summary judgment. There was no error.

The two other cases Mr. Haskell cites in this portion of his brief fail to support his argument. See Blue Br. 12. Mr. Haskell cites *Latremore v. Latremore*, 584 A.2d 626 (Me. 1990), but *Latremore* did not involve a legal malpractice or breach of fiduciary duty claim against an attorney. Rather, the appellant claimed error for failure to give a missing witness instruction. This Court raised, *sua sponte*, whether expert testimony was required to corroborate the severity of the emotional distress, and found that reversal of a jury verdict was unwarranted on the basis of that unraised issue. 584 A.2d at 632.

Exactly why Mr. Haskell cites *Vicnire* is unclear. As noted, there, this Court adopted the rule of liability stated in the Restatement (Second) of Torts,

acknowledging that while “severe” emotional distress is usually manifested by shock, illness or other bodily harm, such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional, citing to the Restatement (Second) of Torts § 46, Comment K. 401 A.2d at 154. The examples in the Restatement (Second) of Torts from Comment K are:

19. A, a police officer, arrests B on a criminal charge. In order to extort a confession, A falsely tells B that her child has been injured in an accident and is dying in a hospital, and that she cannot be released to go to the hospital until she confesses. B suffers severe emotional distress but no physical consequences. A is subject to liability to B.

20. A organizes a mob, and brings it to B's door at night. A tells B that unless he leaves town within ten days the mob will return and lynch him. B suffers severe emotional distress, but no physical consequences. A is subject to liability to B.

Restatement (Second) of Torts § 46 cmt. k, illus. 19 & 20.

Even taking the evidence in the light most favorable to Mr. Haskell, if his argument is that the conduct in this case equates to an attempted lynching or a forced police confession leveraging a dying child, he is mistaken.

Vicnire does not stand for the proposition that “Maine law recognizes that emotional distress may be proven through lay testimony,” if that is the position for which Mr. Haskell cites it. See 401 A.2d at 155 (affirming trial court’s decision to set aside jury verdict awarding the plaintiff compensatory damages for mental suffering, reasoning that the sole evidence offered at trial – lay testimony from the

plaintiff indicating that felt “kind of down” and “mad” and “nervous for about a month” – did not amount to evidence of emotional distress “so severe that no reasonable man could be expected to endure it.”).

iv. *The sporadic unpublished and sister state authority Mr. Haskell points to do not require a different result than the one reached by the Business Court.*

In the final corners of his brief, Mr. Haskell cites an unpublished trial court decision and decades-old cases from sister states, claiming that “[c]ourts throughout the country likewise recognize that emotional distress damages may arise from an attorney’s breach of fiduciary duty, particularly where the misconduct involves disloyalty, deception, or misuse of confidential information, and that such claims are ordinarily for the factfinder.” Blue Br. 14.

The first part of this argument misunderstands the basis upon which summary judgment was entered against Mr. Haskell. That emotional distress damages are an available remedy in breach of fiduciary duty cases against attorneys is not in dispute. They are. However, the distress suffered must be severe or the conduct at issue so egregious that severe emotional distress will be implied. Those were Mr. Haskell’s failings at summary judgment, as the Business Court properly found. With that focus, the stray authority offered by Mr. Haskell is unhelpful.

As a practical matter, *Northern Mattress Co. v. Bernstein Shur*, No. BCD-WB-CV-09-07, is an unpublished trial court decision with no precedential value.

Further, Mr. Haskell offers no pin citation to any facts or analysis from the trial court's order (which he failed to append or include in the appendix) and thus it is not proper appellate argument. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290, 293.

The three sister state decisions offered by Mr. Haskell are distinguishable or fail to support his argument.

Perez is not like this case. That case involved a truck driver who sued, among others, a law firm based on its conduct following an accident that led to his indictment for involuntary manslaughter. 822 S.W.2d 261, 263 (Tex. App. 1991), writ denied (July 1, 1992). His employer retained Kirk & Carrigan to represent it. The attorneys took Perez's statement. He alleged that they told him they were his and his employer's lawyers and that anything he told them would be kept confidential. On this understanding, he gave them a sworn statement concerning the accident. *Id.* at 263. The attorneys stated that they had turned Perez's statement over to the District Attorney to comply with a request of that office and under threat of subpoena. Based in part on the statement, Perez was indicted for involuntary manslaughter. *Id.* at 264. On those specific facts and based on other errors of law, the Texas Appeals Court held summary judgment should not have been entered.

In other words, the facts of that case were that the lawyers told the plaintiff his statement would be confidential, lied about that, turned that statement over to the

prosecution, thus resulting in the plaintiff being indicated for manslaughter, to shift the blame from their other client (the plaintiff's employer). Those facts are quite different than those present here. *Supra* pp. 1-6, 13-16.

It also bears emphasis that the standard for recovery of emotional distress in breach of fiduciary duty cases against attorneys in Texas is different than the standard applied here in Maine. *Compare* *Perez*, 822 S.W.2d 261, 266 (Tex. App. 1991) (indicating that in such cases “[mental anguish consists of the emotional response of the plaintiff caused by the tortfeasor's conduct” and “includes, among other things, the mental sensation of pain resulting from public humiliation.”) with *Garland*, 2009 ME 86, ¶ 24, 976 A.2d 940 (requiring severe emotional distress); *Champagne*, 1998 ME 87, at ¶ 15 (IIED claim requires emotional distress so severe no reasonable person could endure it).

In *Stanley v. Richmond*, 35 Cal.App.4th 1070, 41 Cal.Rptr.2d 768, 784 (1995), also cited by Mr. Haskell, the court in dicta noted that the plaintiff had asserted a claim for emotional distress damages and that the defendant impliedly conceded such damages were recoverable, citing breach of fiduciary duty cases not involving attorneys. 35 Cal. App. 4th at 1097. That court expressly took no position on whether the plaintiff was entitled to emotional distress damages. *Id.* at 1098. It is difficult to see how that case assists Mr. Haskell.

The last case cited by Mr. Haskell, *Bell v. Clark*, 653 N.E.2d 483, 491 (Ind. Ct. App. 1995), opinion adopted, 670 N.E.2d 1290 (Ind. 1996), in no way supports his argument. *Bell* is not a summary judgment case, mentions emotional distress just once, and the court’s holding affirming the underlying verdict had nothing to do with the availability of emotional distress damages. 653 N.E.2d 483, 490 (Ind. Ct. App. 1995), opinion adopted, 670 N.E.2d 1290 (Ind. 1996).

v. ***Mr. Haskell distress is not such that a reasonable person normally constituted would be unable to adequately cope with it.***

“[A] negligent infliction claim requires proof of severe emotional distress.” *Curtis*, 2001 ME 158, ¶ 20, 784 A.2d 18. This showing of proof has also been called “serious emotional distress,” and “exists where a reasonable person normally constituted[] would be unable to adequately cope with the mental stress engendered by the circumstances of the event.” *Carter v. Williams*, 2002 ME 50, ¶ 22, 792 A.2d 1093 (quoting *Town of Stonington v. Galilean Gospel Temple*, 1999 ME 2, ¶ 11, 722 A.2d 1269). For all the reasons discussed above, Mr. Haskell failed to demonstrate that he was “unable to adequately cope with the mental stress engendered by the circumstances of the event,” given that he sought no treatment for his alleged symptoms.

D. Attorney Kline’s conduct is not “extreme and outrageous.”

As noted above, “[i]n the context of an IIED claim, it is for the court to determine in the first instance whether the defendant’s conduct may reasonably be

regarded as so extreme and outrageous to permit recovery, or whether it is necessarily so.” *Champagne*, 1998 ME 87, ¶ 16, 711 A.2d 842. Courts take their role as gatekeepers seriously and do not hesitate to dispose of claims for IIED when the plaintiff’s claims cannot reasonably be interpreted to justify a finding of conduct “so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, utterly intolerable in a civilized community” *Angelica v. Drummond Woodsum & MacMahon, P.A.*, No. CIV.A. CV-02-15, 2003 WL 22250354, at *6 (Me. Super. Sept. 9, 2003). Further, “the tort of intentional infliction of emotional distress is not designed to protect parties from the vicissitudes of the litigation process.” *Davis v. Currier*, 1997 ME 199, ¶ 6, 704 A.2d 1207, 1209 (quotations omitted). Nor is “termination from employment . . . [a sufficient] predicate for an IIED claim against an employer.” *Berry v. WorldWide Language Res., Inc.*, 716 F. Supp. 2d 34, 53 (D. Me. 2010).⁵

Mr. Haskell failed meet this high – extreme and outrageous – burden. Again, taking Mr. Haskell’s claims at their worst, Attorney Kline is alleged to have failed to advise Mr. Haskell of any potential or actual conflict of interest in the dual representation of Mr. Haskell and Pratt; failed to obtain informed written consent to that joint representation; failed to accurately advise Mr. Haskell as to Pratt’s

⁵ Although the Business Court’s order did not directly reach this issue, the record establishes that much of Mr. Haskell’s anxiety was due to his loss of his employment and his litigation experience in the Underlying Matter. App. 71.

agreement or obligation to pay Mr. Haskell's attorney's fees, and failed to document that agreement; failed to advise Mr. Haskell to retain or confer with independent legal counsel; and improperly answered Mr. Haskell's crossclaim on behalf of Pratt. This is not conduct so extreme and outrageous as to exceed all possible bounds of decency, nor conduct that must be regarded as atrocious, utterly intolerable in a civilized community. *See Curtis*, 2001 ME 158, at ¶ 15. And Mr. Haskell has cited no Maine authority to support his argument that it is.

CONCLUSION

This Court should therefore affirm summary judgment in favor of the Kline Defendants on these grounds or any alternative grounds found in the record and award the Kline Defendants their costs.

Dated: April 13, 2026

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CERTIFICATE OF SERVICE

I, Matthew S. Wahrer, hereby certify that I have made due service of the foregoing Brief of Defendants/Appellees Robert W. Kline, Esq. and Kline Law Offices by mailing two (2) copies of same by U.S. Postal Service, postage prepaid and one copy via email, this date upon:

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