

MARTINE LAW TRAINING UPDATE

ALFORD PLEA OF GUILTY (Defendant Denies Guilt) Three Steps to Making a Proper Record

QUESTION: What Is An ‘Alford’ Plea of Guilty and What Procedure Must the District Court Follow Before an Alford Plea Can Be Accepted?

In *North Carolina v. Alford*, the United States Supreme Court held that it is constitutionally permissible for a trial court to accept a defendant’s guilty plea even when the defendant affirmatively maintains his innocence. The Court reasoned that a guilty plea is valid under the Due Process Clause so long as the record reflects a *strong factual basis for the plea* and the defendant voluntarily, knowingly, and intelligently chooses to plead guilty—often to avoid the risk of a harsher sentence—based on the belief that the State’s evidence would likely result in a conviction at trial. 400 U.S. 25 (1970).

Minnesota Supreme Court Caution

Minnesota has adopted the *Alford* framework, but with caution. In *State v. Theis*, 742 N.W.2d 643 (Minn. 2007), the Minnesota Supreme Court reaffirmed that courts must not “cavalierly accept” an Alford plea. Instead, the record must clearly show that the defendant understands the nature and consequences of the plea, and that the plea is a rational choice given the strength of the evidence against them.

Such pleas should only be accepted if they are “voluntary and represent...a knowing and intelligent choice of the alternative courses of action available,” and that the factual basis inquiry is “essential to the determination of this issue.” *State v. Goulette*, 258 N.W.2d 758 (Minn. 1977). *Theis*, 742 N.W.2d at 647.

A Valid *Alford* Plea Requires Three Basic Steps

Step One: The record should explicitly indicate that the defendant is entering an Alford plea and that the defendant understands what an Alford Plea is. The following is a sample script that a defense attorney or prosecutor can follow:

“Your Honor, at this time, the Defendant intends to enter an *Alford plea of guilty* to the charge of [insert charge]. Before proceeding further, I’d like to confirm on the record that the Defendant understands what an Alford plea is, and that this decision is being made voluntarily and intelligently.” (Defense Counsel or Prosecutor to Defendant:)

Question 1: Mr./Ms. [Defendant’s name], do you understand that an *Alford plea* means you are pleading guilty to this charge **even though you maintain that you did not commit the offense**?

Question 2: Do you understand that the reason you are pleading guilty under Alford is because you believe that the State has strong evidence against you, and that there is a **substantial likelihood** that a jury would find you guilty **beyond a reasonable doubt** if the case went to trial?

Question 3: Do you understand that by entering this plea, you are giving up your right to have a trial, to confront the State’s witnesses, and to require the State to prove your guilt beyond a reasonable doubt?

Question 4: Do you understand that a standard guilty plea usually involves admitting you committed the offense, but with an Alford plea, you are *not admitting guilt*—you are simply choosing to plead guilty because you believe it is in your best interest based on the strength of the evidence?

Question 5: Have you had enough time to talk with me about this type of plea and the consequences of entering it?

Question 6: Are you entering this plea freely and voluntarily, and not because anyone is threatening or forcing you to do so?

Step Two: The defendant should be asked the following seven questions. See Alford Plea Addendum to the Rule 15 Petition to Plead Guilty, Appendix G.

Question 1: Have you reviewed the complaint, police reports, witness statements, and other evidence that the state will offer against you if you have a trial?

Question 2: Do you understand that if you went to trial, the state's witnesses would testify that the following occurred: _____.

- a. **Common Practice:** *One or both of the attorneys, usually the prosecutor, summarizes the state's case, including specific statements from the police reports and witness statements. The summary of the facts should be as detailed as possible.*
- b. **Judicial Tip on Best Practice:** *Although the above common practice has been upheld as sufficient, the Minnesota Supreme Court has suggested the following as a better practice:*

"[A] better practice would be the introduction, by the prosecutor, of statements of witnesses or other items from his file, which would aid the court in its determination. In appropriate cases, the prosecutor might even consider calling some of the state's witnesses for the purpose of giving a shortened version of what their testimony would be were the case to go to trial." Goulette, 258 N.W.2d at 761; Theis, 742 N.W.2d 643 at 651, fn 2.

Question 3: Do you believe that there is a 'substantial likelihood' that you will be found guilty, beyond a reasonable doubt, of the offense of _____ if the state's evidence is presented against you at trial?

- a. **Caution:** *Conviction reversed when defendant only acknowledged the "risk" that he could be convicted. State v. Theis, 742 N.W.2d 643 (Minn. 2007).*

Question 4: Do you understand that if the judge accepts your Alford guilty plea, you will be convicted of the offense of _____, and you will be considered just as guilty as you would be if you had admitted your guilt?

Question 5: Do you understand that your claim of innocence will not have any impact on the terms and conditions of your sentence, your probation (if any), or any collateral consequences stemming from your conviction, including civil commitment for treatment?

Question 6: Do you understand that you may be required to successfully complete treatment for your conduct underlying the offense to which you are pleading guilty? And if you are required to successfully complete such treatment and you refuse to admit your guilt in treatment, you may be discharged from treatment. Failure to complete such treatment may result in your incarceration, civil commitment for treatment, or both.

Question 7: Are you entering this plea to obtain the benefit of the plea bargain being offered by the prosecutor?

Step Three: The District Court should enter the following finding:

Based upon the facts offered in support of the plea, the court finds there is sufficient evidence to support a jury verdict of guilty and that the plea is voluntarily, knowingly, and intelligently entered.

State v. Theis, 742 N.W.2d 643 at 647

Your *Alford* plea is now appeal-proof

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Special thanks to Martine Law attorneys [Luke McClure](#) and [Kalen Best](#) for generously contributing their insight and expertise to this update.

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