

▲ **ALFORD GUILTY PLEAS**

In Minnesota, criminal defendants may assert their innocence, but nevertheless plead guilty. The arrangement, known as an *Alford* plea, allows the defendant to plead guilty to an offense, despite protesting innocence. The device is often used when defendants are unable, or unwilling, to admit their guilt, but recognize that there is sufficient evidence to support conviction. But trial courts must engage in exacting scrutiny before accepting an *Alford* plea. This obligation was underscored in a pair of recent concurrent rulings by the Minnesota Court of Appeals, allowing defendants to withdraw *Alford* pleas. *State v. Thurmer*, 2008 WL 1972217 (Minn. App. 2008) (unpublished); *State v. Neff*, 2008 WL 1971757 (Minn. App. 2008) (unpublished). In both cases, one a burglary and the other a second-degree criminal sexual conduct matter, the trial courts accepted *Alford* pleas without independently assessing the evidence, beyond the official documents in the record, including the complaint and other items. The appellate court reversed and remanded both cases on grounds that the trial judges failed to “independently” assess the record, assure themselves that there was sufficient evidence to support convictions, and specify what particular evidence or testimony they relied upon. Trial courts should independently assess the evidence and state on the record what particular matters would support a conviction. Defendants may appeal their *Alford* pleas and have them set aside if there is insufficient indication on the record that the trial judges “independently” assessed the records and specified the supporting evidence.



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402 (8th Cir. 2008), the appellate court reversed and reinstated a claim for wrongful termination under the Americans with Disabilities Act (ADA) after the trial court had dismissed the lawsuit because of the claimant’s failure to make full discovery. The court reasoned that the claimant’s failure was not egregious enough to support the “disproportionate” remedy of dismissal. But, going further, the court stated that the lawsuit should not have been dismissed for discovery failures without any advance warning. The “failure to give warning” was not the sole basis for reversal, but the court went on to certainly encourage such admonition before imposition of an ultimate discovery sanction. Parties who fail to comply with discovery obligations can point to these cases, at both the federal and state levels, in order to avoid a dispositive discovery sanction if they have not received explicit advance notice of that potential action. Litigants seeking the imposition of an ultimate discovery sanction, whether dismissal or default, should seek short time frames for compliance, to position themselves for seeking severe discovery sanctions.



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▼ **Check Deposits**

Don’t mistake a bank telling you that a check deposited into your trust account has “cleared” for a statement that it wasn’t counterfeit. “Cleared” means only that the bank treats the money as “available,” not that the check was good and you bear no risk of loss. A current scam begins when a lawyer takes on a new client who pretends to have a claim against someone. The claim’s nature is irrelevant. The trap begins when the someone “agrees” to settle and pay. The lawyer deposits the someone’s check into the trust account, waits until the bank says it’s “cleared,” then wires the net amount due to the client. Only days later will the lawyer learn that the “cleared” check has bounced. One help in avoiding this trap is to verify that the MICR digits on the check are what they should be, both optically and magnetically. (Faked digits delay learning that the check is counterfeit, creating the time window for the fraud.)

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▲ **Discovery Dismissal/Default**

A litigant who commits serious violations in discovery may face severe sanctions, including dismissal of a claim in his lawsuit or, for a defendant, entry of a default judgment. But before these ultimate sanctions are imposed, courts generally must provide a warning to the recalcitrant litigant, and only if the warning is disobeyed may a dispositive sanction be imposed. This has long been the rule in Minnesota state court jurisprudence, dating back to *Beal v. Reinertson*,

298 Minn. 542, 215 N.W.2d 57 (1974), in which the Minnesota Supreme Court held that a dispositive discovery sanction should not be imposed after the Court gives warning until there is non-compliance with an explicit court order for discovery. The same rule was recently applied by the 8th Circuit Court of Appeals, making federal and state court practice congruent. In *Smith v. Gold Dust Casino*, 526 F.3d