

## Colorado rule change could lower risk for medical malpractice plaintiffs

Written by Australian Business

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September 20, 2013 /**24-7PressRelease**/ -- Every lawsuit involves risk. Even very strong cases can take unexpected turns before a jury or judge. While some level of risk is inherent to the American legal system, a new proposed rule change in Colorado could make things easier on those of limited means who wish to pursue a [medical malpractice](#) lawsuit.

### Court could consider financial circumstance in allocating costs under proposal

The Colorado Rules of Civil Procedure apply to medical malpractice cases and all other kinds of civil lawsuits brought in the state courts of Colorado. The Colorado Rules of Civil Procedure are a lengthy and complex legal code that controls everything from time limits to make certain filings to the proper venue in which to bring a lawsuit.

Colorado Rule of Civil Procedure 54(d) has to do with the costs of a lawsuit. Under Rule 54(d)(2), a claim for attorney's fees after the conclusion of the lawsuit must be made by motion. The judge may consider any applicable laws, rules or reasoning that would entitle the party making the motion to payment of attorney's fee from the other side.

However, attorney's fees are not always the only costs in a lawsuit. Under Colorado Rule of Civil Procedure 54(d)(1), unless an applicable statute or court order says otherwise, other costs of litigation beyond attorney's fees can be given to the prevailing party.

Why is this rule so important in medical malpractice cases? Medical malpractice claims can run up significant costs beyond attorney's fees because they often require costly testimony from an expert witness. While the [insurance companies](#) can afford to risk losing and paying for the plaintiff's expert, an individual plaintiff could be devastated financially if forced to pay for the insurance company's experts in the event he or she lost the lawsuit. This disproportionate ability to withstand risk could encourage even plaintiffs with a strong case to accept settlement and thereby avoid any chance of having to pay the other side's costs.

In a recent case in Boulder, the family of a child with severe cerebral palsy lost their lawsuit. The insurance company for the defendant doctors sought and received an order from the judge for \$340,000 in costs assessed against the family. That family will now have to declare bankruptcy.

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In early September, 2013, a change to the Colorado Rules of Civil Procedure was proposed that could help level the playing field. If the proposal is accepted and added to the Rules, it would direct the court to take into account the economic circumstances of the losing party when assessing costs. Thus, rather than costs being automatically assessed to the loser, parties with limited resources could be shielded from the prospect of a loss in court wiping them out completely.

### **A Colorado medical malpractice attorney can tell you more about financing a suit**

The proposed rule change would be a good thing for those seeking to bring a medical malpractice claim. It is likely to make it into an amended version of the Colorado Rules of Civil Procedure in the near future; but, even if it does not, you should not hesitate to pursue any legitimate medical malpractice case. The majority of medical malpractice cases settle before trial, meaning any risk of having to pay the other side's costs is eliminated.

To learn more about how the Colorado Rules of Civil Procedure could affect your claim and to find out more about pursuing a lawsuit in a cost effective manner, talk to a Colorado medical malpractice attorney today.

Article provided by The Mahoney Law Firm Visit us at [www.mahoneylaw.com](http://www.mahoneylaw.com)