

Private attorney general is an informal term usually used today in the United States to refer to a private party who brings a lawsuit considered to be in the public interest, i.e., benefiting the general public and not just the plaintiff.[1] The person considered "private attorney general" is entitled to recover attorney's fees if he or she prevails. The rationale behind this principle is to provide extra incentive to private citizens to pursue suits that may be of benefit to society at large.

Examples of application:

Many civil rights statutes rely on private attorneys general for their enforcement. In *Newman v. Piggie Park Enterprises*,[2] one of the earliest cases construing the Civil Rights Act of 1964, the United States Supreme Court ruled that "A public accommodations suit is thus private in form only. When a plaintiff brings an action . . . he cannot recover damages. If he obtains an injunction, he does so not for himself alone but also as a 'private attorney general,' vindicating a policy that Congress considered of the highest priority." The United States Congress has also passed laws with "private attorney general" provisions that provide for the enforcement of laws prohibiting employment discrimination, police brutality, and water pollution. Under the Clean Water Act, for example, "any citizen" may bring suit against an individual or a company that is a source of water pollution.

Another example of the "private attorney general" provisions is the Racketeer Influenced and Corrupt Organizations Act (RICO). RICO allows average citizens (private attorneys general) to sue those organizations that commit mail and wire fraud as part of their criminal enterprise. To date, there are over 60 federal statutes that encourage private enforcement by allowing prevailing plaintiffs to collect attorney's fees.

Attorneys who function as a private attorney general do so without compensation. The statutes permitting a plaintiff to recover attorneys' fees have been held not to apply when the plaintiff is an attorney.

Civil Rights Attorney's Fees Award Act:

The U.S. Congress codified the private attorney general principle into law with the enactment of Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988. The Senate Report on this statute stated that The Senate Committee on the Judiciary wanted to level the playing field so that private citizens, who might have little or no money, could still serve as "private attorneys general" and afford to bring actions, even against state or local bodies, to enforce the civil rights laws. The Committee acknowledged that, "if private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court." Where a plaintiff wins his or her lawsuit and is considered the "prevailing party," § 1988 acts to shift fees, including expert witness fees [at least in certain types of civil rights actions, under the Civil Rights Act of 1991, even if not in § 1983 actions], and to make those who acted as private attorneys general whole again, thus encouraging the enforcement of the civil rights laws. The Senate reported that it intended fee awards to be "adequate to attract competent counsel" to represent client with civil rights grievances. S. Rep. No. 94-1011, p. 6 (1976). The U.S. Supreme Court has interpreted the act to provide for the payment of a "reasonable attorney's fee" based on the fair market value of the legal services.

Other uses:

The term also refers more generally to any person who holds a general power of attorney from someone else, and also to any person who represents the public in any civil or criminal court proceeding. Most criminal prosecutions today in the United States and other countries in the

Anglo-American legal tradition are conducted by public prosecutors who are public employees, but until the late 19th century most criminal prosecutions in the United States were conducted by private persons, usually but not always lawyers, either paid by private parties or asked by the court to serve pro bono. Private criminal prosecutions are still legal in several of those countries, including several states of the United States.

References:

1. The earliest known use by a court in the United States is by Judge Frank in *Associated Industries of New York State, Inc. v. Ickes*, 134 F.2d 694 (2d Cir. 1943).
2. 390 U.S. 400 (1968) 88 S.Ct. 964, 19 L.Ed.2d 1263.

See also:

- \* *Qui tam*, an analogous concept
- \* *Parens patriae*, a roughly opposite concept