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In Maryland, the Court has the authority to appoint what is called a Best Interest Attorney. What is that, you ask? Well, it is the term used in our courts to categorize any of the various lawyers for children; this is also the modern multi-purpose term used for a *Guardian Ad Litem*, [Nagle v. Hooks](#) Attorney, and regular old attorney.

There are three different types of Best Interest Attorneys in Maryland: (1) the attorney who determines whether it is appropriate to waive any therapist-patient privilege your child may have with his or her treating therapist/psychologist/social-worker. This type of Best Interest Attorney may sometimes also be referred to as a [Nagle v. Hooks](#) attorney (this harkens back to the seminal case in Maryland where the Court stated there must be an attorney to determine whether such privilege could be waived- *i.e.* parents could not waive their child's privilege when there was litigation between the parents); (2) an attorney who advocates for what he or she feels is in the child's best interests (previously denoted by the term GAL or *Guardian Ad Litem*); and (3) an attorney who represents the child to advocate for what the child wants. While (2) and (3) may not appear to be easily distinguishable, think of this in parental terms - what your child wants is not always what is best.

Maryland has codified the factors for the Court to consider when determining if a Best Interest Attorney (in whatever iteration) is appropriate. When a parent (or both) requests the of a Best Interest Attorney, the Court will conduct an analysis looking at Md. Rule 9-205.1, including an examination of what information may be important in the contested custody case.

Maryland Rule 9-205.1 (b) states, "In determining whether to appoint child's counsel, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment. Appointment of a Best Interest Attorney may be most appropriate in cases involving the following factors, allegations, or concerns:

1. request of one or both parties;
2. high level of conflict;
3. inappropriate adult influence or manipulation;
4. past or current child abuse or neglect;
5. past or current mental health problems of the child or party;
6. special physical, education, or mental health needs of the child that require investigation or advocacy;

7. actual or threatened family violence;
8. alcohol or other substance abuse;
9. consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
10. relocation that substantially reduces the child's time with a parent, sibling, or both;
11. any other factor that the court considers "relevant."

[Emphasis added]

The Court will also consider the 10 enumerated factors and the catchall "any other factor that the court considers relevant" in weighing whether a Best Interest Attorney is appropriate. No one factor is dispositive. These same considerations are important for you to consider in gauging whether you want a Best Interest Attorney appointed for your child (or children).

Unlike your attorney, the Best Interest Attorney's [job](#) may not be as simple as advocating for what the child (the client) wants. [For example](#), the Court may need to hear from the children's therapist if their input is important in determining who should make decisions for the children and what time-sharing arrangement is appropriate. The Court will examine whether there is any other way of getting the therapist's opinion in front of the court (*i.e.* has a custody evaluation been ordered). If not, the Court may appoint a Best Interest Attorney to determine whether the child's privilege with their therapist should be waived and whether the therapist should be called to testify.

If the children are more mature and have stated a preference for the Best Interest Attorney may advocate for their client's position.

Knowing the different types of Best Interest Attorneys is simply the first step. After that, you must determine whether a Best Interest Attorney is appropriate in your case for your child or children. You should discuss your concerns with your family law attorney early on in your case and they will help direct you to whether you should seek the assistance of a Best Interest Attorney.

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