

Gates, Jimmie E., The Conservatorship fight over Opal, Mississippi Today (May 19, 2023)
<https://mississippitoday.org/2023/05/19/family-fights-conservatorship-of-mississippi-woman/>

The Conservatorship fight over Opal

Opal K. Smith celebrated her 93rd birthday in March under a conservatorship that for the past eight years has left her with no control over her finances or where she lives.

She is one of the 1.3 million people in the United States living under a legal system that allows someone else, often unrelated, to make personal, financial and medical decisions for them.

Her conservator has her living in an assisted living facility in Hattiesburg, about 35 miles from her home of Columbia.

When reached via phone, Opal wouldn't comment on the matter. However, in a court affidavit, she said: "I want out of this conservatorship now and into a home of my own in or near Columbia, Mississippi."

Opal wants to go home and live with a sitter, and so do some family members, including her daughter, Nancy DeVoe, and Nancy's husband, John. But Smith's two other daughters filed the initial conservatorship petition in 2015 after her husband died, saying Smith was experiencing memory decline.

The fight over her conservatorship stretches from Mississippi to England.

In their petition to create a conservatorship over Opal, Nancy's two sisters — Jill Kendrick Weber, then of Columbia, and Elizabeth Houser of Little Rock — blamed her for initiating the conservatorship. Neither could be reached for comment.

But their 2015 conservatorship petition said that, for approximately the last five years of their father's life, Weber provided assistance and care for her parents as needed, and was motivated by their best interest.

Subsequent to their father's death, the sisters said Nancy traveled to Mississippi from her residence in the United Kingdom in an attempt to control Opal and her assets.

They alleged Nancy engaged Opal in conduct and activities out of character for her and not in her best interest. They said Nancy procured a debit card in Opal's name and compelled her to execute contracts and documents she was not capable of understanding.

Further, they said a physician had indicated Opal was unable to make informed decisions regarding her personal finances, health care, or other serious decisions pertaining to herself or her family.

"Accordingly, the petitioners contend that the Ward, Opal K. Smith, by reason of mental weakness, is incapable of managing her own estate," the petition said.

Nancy said she never attempted to control her mother or her assets, nor did she engage her mother in any activities or conduct that a reasonable person could contend were out of character for her or not in her best interest. She also said she didn't compel her mother to execute any contracts or documents.

John and Nancy DeVoe said the constitution mandates no one be deprived of liberty or property without due process of law. A conservatorship decree, they said, always deprives the individual of property and, in many cases, of liberty.

"Opal never had a chance to testify, present evidence, confront her accusers, or call witnesses," they said in court papers opposing the ongoing conservatorship.

Conservatorships are responsible for \$50 billion in assets, according to a [2018 report](#) by the National Council on Disability.

The Mississippi Administrative Office of Courts reports that 2,481 conservatorship petitions were filed between January 2019 and this past February. The figures include conservatorship petitions for both minors and adults.

In Mississippi, some court records appear to show prior to a 2020 update in guardian and conservatorship laws, that some judges didn't expend much effort investigating conservatorship cases before approving petitions.

The Mississippi Center for Investigative Reporting viewed court dockets from multiple counties, and records show in some cases, conservatorship petitions were approved the same day they were filed.

Attorney George Dickerman, an elder law expert and author in Riverside, California, said conservatorships should be a last resort, only when no reasonable alternatives are available.

Dickerman said sometimes an older person will need assistance but will not voluntarily agree to accept it. He said a conservatorship can be necessary when a perpetrator manipulates an older person and wrongfully takes money or property.

But Dickerman also said some unscrupulous individuals will use conservatorships as a license to steal.

Across the country, there is a hodgepodge of state laws when it comes to conservatorships, and often there are no requirements to record all financial transactions through a state's software application. And there is no national database tracking the number of conservatorships in the country.

The data available on conservatorships and the conditions them varies from state to state. And there is no mandate on a state or federal level for standardized requirements to become a conservator.

Mississippi Supreme Court Justice Dawn Beam, a former chancery judge, played an integral role in updating the state guardian and conservatorship law that took effect Jan. 1, 2020.

Beam told the Mississippi Center for Investigative Reporting there was a time when conservators — often family members of the person under conservatorship — would seek court approval to spend money on such things as swimming pools, four-wheelers and lavish vacations.

She said the goal of the updated law is to protect people with large estates as well as those with only Social Security benefits. It covers minors, older people and other adults unable to care for themselves.

There is a computer system now that allows courts to better manage cases, she said.

“It’s a lot easier to control money going out than trying to claw it back.”

The FBI [elder fraud report](#) for 2022 said total losses reported by those 60 and older were \$3.1 billion, an increase of 84% from 2021.

Although the average loss per victim was \$35,101, more than 5,400 victims each lost more than \$100,000.

“Our oath is to administer justice regardless of rich or poor,” Beam said. “We want to make sure we administer justice. We are doing what we have to do to protect an individual’s assets. We used to just focus on assets. We now have a wellness report that the court can require for the elderly.”

In most states, a judge decides whether to establish a conservatorship after a petition is filed stating why a person can’t manage his or her financial affairs or make appropriate decisions concerning personal care.

The [Family Caregivers Alliance](#) says a conservatorship is supposed to provide a higher degree of protection than alternatives, such as powers of attorneys, trusts and health care directives, due to court oversight.

Government agencies and human rights organizations report older people are more likely to experience neglect, both mental and physical, and more likely to have their assets broken up and sold off piece by piece.

In Mississippi, the Department of Human Service reported 4,252 cases to its adult protective services. Of those, it initiated 4,110 investigations in 2022. August had the highest number — 407.

In September 2015, when Smith was put under a conservatorship, all three sisters were in town to see their father before he died. After his death, Nancy and her sisters disagreed about what to do about their mother. Nancy said any discussion should include their mother and opposed the conservatorship.

Her sisters initially were appointed co-conservators for their mother. However, a Lamar County chancery judge later replaced them with a third-party conservator because of a dispute.

Smith's conservator has changed three more times, and, since 2015, the fees drawn from her account to pay conservators total more than \$160,000, according to the DeVoes. In court records, Smith's estate was valued at almost \$900,000 in 2021.

The DeVoes' opposition to the conservatorship has led to a contentious court fight that could almost mirror that of Brittany Spears, who was under a conservatorship from 2008 until 2021.

In 2016, John and Nancy were ordered to post \$10,000 bonds each before they could file any additional opposition to the conservatorship.

On Jan. 30, Lamar County Chancery Judge Chad Smith, no relation to Opal Smith, ordered John DeVoe to pay \$8,397.43 into Opal's conservatorship account, fined Nancy \$10,000 for contempt, and fired Opal's lawyer because he said it was a conflict for the lawyer to represent both Nancy and Opal.

Nancy DeVoe had opposed the approval of \$43,747,82 from Opal's account to her conservator and ex-conservator in a January order. Chad Smith said in court papers that he had ordered and reiterated she was prohibited from seeking relief until she had posted the bond, which led to her being fined for contempt "due to her contemptuous conduct," Judge Smith wrote in the Jan. 30 order.

"Nancy shall reimburse the conservatorship \$10,000 in attorney's fees. The amount represents the fees expended by the conservator litigating meritless opposition by Nancy during the time period requested," he wrote.

Chad Smith warned that any future unsuccessful legal challenge resulting in the conservator incurring legal fees will result in the fees and expenses being imposed against those presenting an unsuccessful challenge.

The DeVoes, who live in England, have filed a court motion seeking to remove Chad Smith from Opal Smith's case.

Chad Smith is the second judge to handle Opal Smith's conservatorship case. The previous judge, M. Ronald Doleac, retired in 2018 after not seeking reelection.

The DeVoes maintain in court papers that Doleac granted a conservatorship petition on Smith despite insufficient process and without notice, evidence, or opportunity to defend. And they said the conservatorship letter was issued the same day, naming Opal's daughters, Houser and Weber, co-conservators, which they say was a violation of the law.

A typical docket report of a successful Mississippi conservatorship case should show, before the judgment or decree is filed: a sworn petition, summons issued to the target of the conservatorship and a relative, two sworn certificates from licensed physicians or a physician and a licensed psychologist and an entry showing a hearing was held at least seven days after the petition.

After the decree, the docket report should show the letters of conservatorship were issued and entry of a bond securing the performance of the fiduciary duties owed by the conservator to the target and an inventory of the newly created conservatorship estate, to be filed once each year during the term of the conservatorship.

Most conservatorship records in Mississippi are sealed from viewing for anyone not a party to the case. A judge has the discretion whether to make public any documents in a case.

According to a transcript from a July 2022 hearing in Opal's case, attorney Carol Bustin of Hattiesburg, representing Nancy and Opal, argued that "due process requires fairness. It requires that everybody

have their day in court, and Opal Smith never had her day in court. There was never any testimony. She never testified as to whether she wanted this conservatorship or whether she agreed with it, or why she didn't agree with it.”

Attorney Larry Buffington of Collins, a former chancery judge, represented Opal's other two daughters. Buffington said at the July hearing, “Maybe I did it wrong for 20 years, but I don't know that I ever conducted a hearing unless there was a request from somebody on a conservatorship. Most of those actually were done in chambers.”

In a court order, Chad Smith said Doleac initially set the matter for a hearing on Aug. 10, 2015, but continued it until Sept. 15, 2015. Doleac then scheduled a trial for Nov. 3, 2015.

What occurred isn't documented. Chad Smith said state law doesn't require a record to be made of the trial and that a judge has the discretion to decide what evidence to hear.

In August 2016, Doleac replaced the daughters, without their opposition, as conservators, replacing them with attorney Derek Arrington. Seven months later, Doleac appointed Arrington's law partner, G. Neil Rogers, as substitute conservator.

Judge Smith, who took over the case in 2019, granted Rogers' request in 2021 to withdraw as conservator and appointed attorney William Andrews III as his substitute. He also named Andrews to serve as Opal's guardian, meaning he was given responsibility for Smith's care and wellbeing as well as control of her finances.

Doleac wouldn't address the Opal Smith case specifically but said there is a process for the DeVoes to appeal the case, which they did in 2021. A three-judge panel of the state high court denied the request in January 2022 without comment.

John DeVoe said that with them being in England, it has been difficult to find a lawyer to handle their appeal. He said some lawyers they contacted expressed reservations about taking the case since it would be going against a judge.

The DeVoes filed the paperwork themselves seeking Smith's removal from the case to the state Supreme Court. The motion was filed with the court April 18. It has yet to be decided.

"You can't be on the bench and not be criticized," Doleac said in a phone interview. "We have an excellent judiciary in the state. I have never seen anyone take a shortcut."