

## Justice in Spite of the Davenport Civil Rights Commission

Written by Kathleen McCarthy  
Wednesday, 12 May 2010 05:51

---

The decade-long travesty of justice that assailed local dentist Dr. David Botsko because of an out-of-control Davenport Civil Rights Commission (DCRC) is finally over thanks to a ruling by the Iowa Civil Rights Commission on Friday, May 7, dismissing all charges against him.

Iowans can be reassured that when due process is actually followed, testimonies actually read, and evidence actually considered and weighed against the rule of law, justice does prevail, at least when the Iowa Civil Rights Commission is adjudicating.

Davenport residents, however, have no such assurances where the DCRC is concerned. This commission, under the direction of Executive Director Judith Morrell, has proven its ability to violate the very same civil rights it claims to protect. At the end of the day, operating as judge, jury, and prosecutor in civil-rights cases is a perfect formula for abuse of said rights, as unequivocally demonstrated in *Nabb V. Botsko*.

In 2000, after nearly three years as a dental assistant for Dr. Botsko, then-62-year-old, German-born Inglenore Nabb complained to the DCRC that then-46-year-old Dr. Botsko was violating her civil rights in the workplace with age, sex, and national-origin discrimination, including accusations of sexual harassment and constructive discharge. Damages sought by Nabb, according to a November 13, 2009, Iowa Supreme Court decision that forbade attorney fees in any damages awarded, included \$25,000 to Nabb for emotional distress and compensatory damages, \$57,028 to Nabb's attorneys, and \$2,935 for the DCRC. The above figure does not include 10 years of legal fees that Botsko paid for his own defense.

A hearing was held in 2003 with Administrative Law Judge (ALJ) Kevin Visser presiding, after which he ruled that Dr. Botsko was innocent on all counts. Seventeen witnesses testified over a three-day period, only one of which corroborated a single accusation Nabb brought against Botsko. In other words, the bulk of evidence was based on Nabb's testimony alone.

Among the 17 witnesses were past and present employees and patients who contradicted Nabb's testimony, attesting that they saw none of the alleged behavior. This was the same aggregate testimony learned in discovery, yet the DCRC proceeded with its prosecution of Botsko. Nor did it suffice when ALJ Visser's ruling determined that Nabb had not met her burden of proof.

## Justice in Spite of the Davenport Civil Rights Commission

Written by Kathleen McCarthy  
Wednesday, 12 May 2010 05:51

---

The DCRC continued with its prosecution of Botsko by rejecting most of Visser's decision, dropping the age-, sex-, and national-origin-discrimination portions of the suit but finding Botsko guilty of sexual harassment and constructive discharge based on the exact same evidence that a 20-year civil-rights-law judge dismissed categorically. Of the seven commissioners responsible for overturning Visser's ruling, only one attended parts of the three-day hearing. No other commissioner even bothered to attend.

Knowing this case is weak becomes doubly egregious considering its own civil-rights violations; the case was eventually dismissed and forced to start over because the Iowa Supreme Court found Morrell in violation of Botsko's right to due process because of her obvious bias in favor of Nabb -- for not only sitting at Nabb's table during the 2003 hearing but for numerous instances of counseling the claimant and her attorney throughout the proceedings. The court concluded: "The combination of advocacy and adjudicative functions has the appearance of fundamental unfairness in the administrative process."

That was the beginning of the end of this fiasco. In that same decision, The Iowa Supreme Court allowed for the opportunity for Nabb V. Botsko to be transferred from the DCRC to the Iowa Civil Rights Commission (ICRC). Against the wishes of the DCRC, Davenport Corporation Counsel Tom Warner wisely passed it to Des Moines. Obviously the ICRC did its due diligence with this case, something the DCRC consistently failed to do, thereby inflicting great financial harm on a highly skilled area professional, who defended his reputation, his honor, his practice, and his own civil rights to the end. He refused to settle, and fought this abuse of power to its final conclusion -- dismissal of all charges.

There is no question that Dr. Botsko's victory is one all Iowans can celebrate because the ICRC did its job and actually protected our civil rights by upholding Botsko's. However, no ruling of innocence can overcome the damage of 10 years of living with constant uncertainty relative to one's reputation, one's emotional well-being, or the loss of one's sense of security that comes from living in a republic of laws. Nor can it remedy the financial devastation that occurs from being forced to defend oneself against a quasi-judicial government agency such as the DCRC that vindictively and capriciously abuses its power by relentlessly prosecuting an individual, intruding into every aspect of his life with uncorroborated accusations, illegally levying bank accounts, and seizing private property and proprietary documents long before a ruling of guilt or innocence is ever rendered.

In Botsko's case, Nabb's then-attorney Marleta Greve illegally seized approximately \$60,000

## Justice in Spite of the Davenport Civil Rights Commission

Written by Kathleen McCarthy  
Wednesday, 12 May 2010 05:51

---

from Botsko's bank account without his knowledge, or the legal authority. She was ordered to pay it back by the courts, and is now a sitting judge herself in our own Seventh District Court of Iowa. (Voters should remember this at election time.)

It is time for the Davenport City Council to do its job in protecting us from DCRC's abuse of power. Nabb V. Botsko is not the only case that has nothing short of astonishing abuses in its overreaching conduct/procedures. But that is a story for another day.

It should be a no-brainer for the council to call for Morrell's resignation. And knowing that in the future, taking a case to the ICRC is infinitely more preferable to the DCRC's purview, why not consider disbanding the DCRC altogether? If the council does not have the backbone to do this politically, then take the technical route. Under Iowa Code, the threshold for a Civil Rights Commission is a population of 100,000. Davenport is approximately 10,000 short of this requirement.