

For Immediate Release
June 2, 2009

KESTENBAUM EISNER & GORIN CLIENT ACQUITTED
IN SEXUAL ASSAULT CASE

On May 28, a client represented by the law firm of Kestenbaum, Eisner & Gorin was found not guilty after a two-week trial in the Rancho Cucamonga courthouse. The client had been accused of sexually assaulting an intoxicated female. If convicted, the client would have faced a prison sentence of up to 8 yrs.

Our client, a codefendant, and the alleged victim met while attending an out-patient recovery program. The three became friendly during the program, and they had arranged to meet and party together the last night of the program at our client's apartment. Once they arrived, they drank beer for about two hours. The alleged victim testified that after two hours of drinking she felt intoxicated, tired, and buzzed, and that she went to lay down on the couch. At that point, she either fell asleep or passed out. When she came to, she found that both defendants were having sex with her. Startled, she pushed them away, and then called her friends to pick her up. After her boyfriend picked her up and she told him what had happened, he took her to the hospital and then notified the police. A blood alcohol test of the alleged victim revealed that she had over twice the legal limit of alcohol in her system permitted by law to safely operate a motor vehicle.

Our client testified that after the two hours of drinking he and the victim engaged in flirtatious dancing which led to her engaging in lap dancing, then oral sex, then sex in his bedroom with the codefendant. After his arrest our client was interrogated and denied any physical contact with the victim, and denied observing any physical contact with victim and codefendant. He is subsequently interviewed at the police station and again denied all involvement. Then, when confronted with the fact that forensic evidence will prove physical contact if there was any, he admitted the oral copulation.

As part of our defense, our law firm presented a psychiatrist who testified about "alcohol blackouts" and how they differ from "passing out" or losing consciousness. During an alcohol blackout, the brain is not laying down new memory, and the person cannot later recall what occurred during this time. Such blackouts can begin and end abruptly, and persons can perform relatively complex tasks, such as driving, during this time.

The defense argued that even if the victim was being truthful about the events, then her lack of memory was due to a "blackout," and not from "passing out." Upon questioning the jurors, we learned that this was one of the key factors in their decision.

The other defendant, not represented by the Kestenbaum Eisner & Gorin law firm, avoided trial by pleading guilty to felony assault.