

# University of Arkansas, Fayetteville

---

From the Selected Works of Timothy R Tarvin

---

June 5, 2013

## From School of Law (SOL) to Plain Old SOL: How The Bar Exam, Jobs Market, Bankruptcy Code And A Cup of Coffee Made It Difficult For One Law Graduate Seeking To Find A Way Out Of Debt

Timothy R Tarvin



Available at: [https://works.bepress.com/timothy\\_tarvin/6/](https://works.bepress.com/timothy_tarvin/6/)

---

University of Arkansas

---



## From School Of Law (SOL) To Plain Old SOL: How The Bar Exam, Jobs Market, Bankruptcy Code And A Cup Of Coffee Made It Difficult For One Law Graduate Seeking To Find A Way Out Of Debt

By Tim Tarvin · June 5, 2013 · 2013 Ark. L. Notes 995  
In categories: Debtor/Creditor, Snapshot

Lord, have mercy on the poor man!<sup>1</sup> “How many roads must a man walk down before they will call him a man?”<sup>2</sup> Michael Hedlund spent more than a decade trying to eliminate student loan obligations he struggled unsuccessfully to repay. In the process he helped redefine the law regarding the discharge of student loans when the United States Court of Appeals for the Ninth Circuit reversed a lower court ruling and granted Hedlund

a partial discharge of his student loans.<sup>3</sup>

Hedlund graduated from the University of Oregon with a degree in Business Administration and got his law degree from Willamette Law School. He financed his education with Stafford loans held by two different lenders. After law school he took a bar preparation class for the Oregon bar and took the bar exam in July 1997. He failed on the first try, and he failed again in 1998. He lost his job with the District Attorney's office because he failed the exam the second time.

Not to be deterred, he obtained full time work as a Juvenile Counselor, enrolled in yet another bar preparation course and took two months off to prepare. On the way to the exam site, he stopped for coffee, locked his keys in his car and missed the exam. It must have seemed the worst of times, but if it did, it only seemed that way.

His student loans went to repayment in January of 1999 while he was employed as an intern with the DA. He owed \$85,000 to one of his student loan lenders and was paying monthly payments of over \$800. Because he was only making \$10 per hour he obtained various hardship forbearances. When the extensions ended he applied to consolidate his loans in an effort to reduce his monthly payments to something manageable. When he sought to verify the status of his consolidation application, he learned the lender never received the application. Furthermore, he learned that because he was now in default, he was *ineligible* for consolidation.

Hedlund researched his eligibility for the Income Contingent Repayment Plan (ICRP). Based on his research and the lender's representation that he was ineligible due to the default, Hedlund decided he could not qualify for ICRP.

In September 1999, he received an inheritance that enabled him to pay almost a thousand dollars on his student loan debt, but he was still unable to make his monthly payments. He tried to negotiate a feasible plan but was rebuffed. In January 2002 his wages were garnished at the rate of \$250 per month, and his bank account was garnished for \$1,100. On May 7, 2003, almost ten years ago to the day prior to the Ninth Circuit's decision, Hedlund filed a chapter 7 bankruptcy petition. On June 16, 2003, he commenced an adversary proceeding seeking the discharge of his student loans pursuant to 11 U.S.C. § 523(a)(8).<sup>4</sup>

Hedlund settled with one lender before trial. At trial against the second lender, the bankruptcy court granted a partial discharge of all but \$30,000 of the debt of \$85,000.

On appeal, the Bankruptcy Appellate Panel (BAP) reversed and reinstated the debt in its entirety. The Ninth Circuit vacated the BAP decision and remanded for further proceedings holding that the bankruptcy court failed to consider all of the evidence and apply the three factors from *Brunner v. New York Higher Education Services Corp.*, 831 F2d 395 (2d Cir. 1987).<sup>5</sup>

On remand the parties agreed to proceed on the 2003 record. The bankruptcy court ruled in Hedlund's favor and discharged all but \$32,080 of his debt. Applying the three-factor test, the court held that: (1) Hedlund could not maintain a minimal standard of living if required to repay the full amount of the loans; (2) "additional circumstances" indicated that Hedlund's inability to repay his loans would persist into the future; and (3) Hedlund had made good faith efforts to repay his loans.

The lender appealed and the district court reversed, holding that the bankruptcy court's good faith ruling was erroneous and finding that he had not used his best efforts to maximize income and minimize expenses. The district court reinstated the student loan in its entirety. Hedlund appealed, and the Ninth Circuit reversed the district court based on the district court's failure to review the factual findings using clear error review. The district court erred in using the *de novo* standard of review.<sup>6</sup> The Ninth Circuit clarified that the *de novo* standard is appropriate for review of the bankruptcy court's interpretation of the Bankruptcy Code.

In reversing, the Ninth Circuit found that there was considerable evidence to show that Hedlund had maximized his income, and that the district court properly refused to attribute Mrs. Hedlund's underemployment to Hedlund's bad faith.<sup>7</sup> The Ninth Circuit held that Hedlund had not fully minimized his expenses, but that his excess expenses were marginal. And, while his efforts to negotiate and make voluntary payments were "minimal" and could have supported a finding of lack of good faith, the three-judge panel concluded "it was not so strong as to demand such a finding."

In contrast to other cases cited by the appellee, the opinion noted that Hedlund maximized his employment, made three attempts at the bar exam, and submitted evidence that a law license would not materially improve his financial condition. He waited four years from the start of his repayment obligations before filing for bankruptcy, during which period he was subject to wage garnishments.

While so many areas of the law remain murky, it is comforting to know that in at least one Circuit there is a clear standard of review and case law setting forth the burden of

proof for those seeking similar relief. If you are a law graduate with student loans, the morale of the story is this- ask for forbearance as long as you can, get a job (any job), take the bar at least twice and try a third time (for Pete's sake don't lock your keys in the car on the day of the exam), turn over any inheritance to your student loan lenders, negotiate continuously, apply to consolidate (pray the lender does not lose your application), pay what you can, endure garnishments for years, file chapter 7, file an adversary proceeding, appeal, retry, appeal again and be satisfied if you are able to obtain even a partial discharge. Therein lies hope. Maybe next time around the student loan lender will consider what a borrower making \$10 per hour can pay towards \$85,000.

---

1. This is a paraphrase from lyrics by Travis Tritt and Black Oak Arkansas. ↩
2. Line from the lyrics of "Blowin' in the Wind" by Bob Dylan. ↩
3. *Hedlund v. The Educational Resources Institute, Inc.; and Pennsylvania Higher Education Assistance Agency, (In re Hedlund)*>, \_\_\_F.3d\_\_\_, 2013 WL 2232325 (9<sup>th</sup> Cir. 2013). ↩
4. Student loans are not dischargeable unless this would impose an "undue hardship" on the debtor. In determining whether the undue hardship showing has been made, the Ninth Circuit follows the three-part test from *Brunner v. New York Higher Education Service Corp.*, 831 F.2d 395 (2d Cir. 1987). ↩
5. The Ninth Circuit adopted the *Brunner* test in *United Student Aid Funds, Inc. v. Pena (In re Pena)*, 155 F.3d 1108, 1111-12 (9<sup>th</sup> Cir. 1998). ↩
6. See *Krieger v. Educ. Credit Mgt. Corp.*, No. 12-3592, 2013 WL 1442305, at \*2 (7<sup>th</sup> Cir. Apr. 10, 2013). ↩
7. Hedlund is married with three daughters. He married in 2000, and he started his family in 2001. ↩