

## **Giving Clients Bad News**

Our clients range from very articulate and/or appreciative to illiterate and/or anxious to shoot the messenger. The better we communicate with all of them, the easier it is to deal with them. Here are some considerations in communicating with our wide range of clients:

1. Meet them at their level.
2. Empathize. I constantly remind myself that most of our clients are poor and desperate.
3. Avoid jargon.
4. Answer as many questions as possible as completely as possible, however, note that sometimes too many details serve only to confuse.
5. Discern inability to understand from inability to accept.
6. Explain policy behind law if possible where application seems unfair to client.
7. Clarify limits of representation.
8. Feel free to say no if case is hopeless in favor of other clients with better claims; project time is limited and prioritization is necessary.
9. Make it very clear when you are done.
10. Sometimes a raised voice is necessary when clients continue to badger you after you have told them there is nothing else you can do.
11. Be firm when clients attack you. Do not allow vitriol. Accepting abuse is not part of the job.

## Case Notes for Mr. Goodyear

Client got a letter from Goodyear. The letter says Goodyear has elected to adopt pension funding relief. Client was discharged October 10, 1983. He had 12 1/2 years service. He said he was incarcerated and could not go back to work, and was told not to come back on company property. The letter he read to me was addressed to pension plan participant. Mr. Goodyear is 63. I told him I think he is entitled to benefits and could ask for a benefit estimate. That would detail what he is entitled to and how to apply. Client had written a letter back to Goodyear asking for millions of dollars and asked if I would represent him. I said I would not, but that I will help him get a benefit estimate.

We called the Goodyear benefit center. They will send him a benefit estimate. They said that client could have retired as early as age 55. Client is concerned that taking the pension will impact his pro se litigation against Goodyear. I told him that it is totally separate. The pension has to do with his years of service. Client says that he is suing over arbitration that occurred in the 1980s when he tried to go back to work and was not allowed to. I told him that it is his decision about whether he wants to apply for the pension or not. He said that if it is not enough money he will not apply, but will pursue his lawsuit. I told him that the pension is a sure thing and the lawsuit is not, and also that his pension will not be large because he did not work that many years and was last employed in the early 1980s.

Client left me two long messages asking me to sue Goodyear for one million dollars per year for 31 years of pension benefits. I called him back and said that I do not litigate period. I told client he needs to wait to get the letter about what he is entitled to first. I told him the pension amounts are based on the formula for benefits in the pension plan document.

I asked client if he got benefit information. At first he said he did not get a letter. Then he said he did get a letter. The letter he got is a funding notice only. I told him that we can call back and find out if the info has been sent out yet, and if not, when it will be sent out. We called together and the rep named Amy told us that the request is being processed. She gave us a reference number. She said that it should be sent by the end of the week. Client said he will give me a call when he gets it.

Client called. He has not gotten docs yet, but wanted to send me his information and pictures about his claims against Goodyear. I reminded him that I am not going to participate in any litigation, and that all I am going to do is to be sure he gets his pension.

I called client to see if he got the docs. He did not, but he did not want to call Goodyear back and did not want me to call them for him. He also said that he sent me his docs.

Received docs from client. There is no pension information in them at all. They are glossy, oversized collages which include scantily clad women, advertisements, and pieces of legal documents with a great deal of client's handwritten rant about Goodyear. Returned with a letter that I cannot assist him with this matter.

[Note from my colleague who took client's call one day.] Gail with good reason has already closed client's case. I told client I will try to call him back this afternoon, but I also warned him I will unlikely have much legal advice to offer him. I looked at the stuff he sent Gail and to describe it as bizarre would be an understatement.

Called client and told him we cannot help him, either on the PRP or the Hotline. I did tell client he will be getting a formal letter declining representation from the PRP. The less said about the documents client sent to Gail, the better.

Received more docs from client, see attached file. Sent closing letter.

Received more docs from client. He received the application docs from Goodyear and filled them out, however, he put down that he wanted 2.16 billion withheld from his checks. I called him and explained that if they follow his instructions he will get nothing and IRS will get all of his check. Client did not intend that result. We called Goodyear to ask them to change it, but then client told them he wanted to change the survivor option he put on the application instead of the withholding. They told him that he will get a new application in 30 days

Finally received copy of client's benefit estimate. Calculated recovery for client. Goodyear docs show client is entitled to \$159.18 per month for a lifetime benefit of \$40,130 (cash accumulated and present value).

Client called back and left two messages that he called Goodyear and they told him not to call anymore. I called him back and told him there is no point in calling Goodyear now because we are waiting for a new application and it is not supposed to go out until early in Feb. I told him if he has not received it by then I will call Goodyear with him.

Client received the new application from Goodyear. He told me that he thinks he is entitled to more. He asked me if the pension is separate from his appeals case. I said that it is, and that he ought to apply for the money Goodyear thinks he is entitled to. I told him there is no reason for him not to take the \$159 per month. Client says he will apply for it. I told him he cannot change the application or they will not accept it. I told him that was the problem the last time. Client says he will fill it out and send it in. Composed and sent closing letter.

Client called and asked if I would write a letter to Goodyear asking for money. I told him I would not. I told him that I would not help him ask for anything different than what is on the

application. I reminded him that I cannot litigate the issue for him; all I can do is assist him in obtaining the benefits he is entitled to. If he changes the application in any way, he will not get paid. I reminded him that I got Goodyear to send him two applications, but since he changed them and did not fill them out properly, he will not be paid the amount they think he is entitled to. Client asked if he ought to let the appeals court handle this matter. I told him that is up to him.

Client sent in his survey and a \$50 money order payable to me. Also instructions about contacting some person for him. I endorsed the money order and returned it to him, explaining that I cannot accept donations from clients.

Received two very long messages from client asking me to file his United States Supreme Court appeal. I called him back to remind him that I do not do litigation. He said he would send me a copy. I told him it is a waste of his time to send me a copy.

Received documents from client. He called and told me he sent \$600 to U.S. Supreme Court. They have not cashed the money orders. I told him that my guess is that his docs did not meet their filing requirements and that is why money orders were not cashed, and that they are not required to accept appeals. Again I told him I could not assist with litigation.

Received more docs from client. More large glossy collages with magazine pictures and text, snippets from my letters and letters from the court, and his writing all over them. Client called about docs. I told him that I do not do litigation and cannot help him. He claims he is only sending me the docs to keep me informed. I raised my voice and told him not to send me any more documents, I am not going to do anything for him, it is a waste of his money, and that Supreme Court is not going to take his case. He asked why not, and I told him that they do not have to take every case, and that they get to choose what cases they take.

Client finally stopped mailing me docs and calling.



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April 16, 2015

[REDACTED]

*Re: pension benefits*

[REDACTED]

Today we discussed your pension overpayment. Apparently your husband had told you that you would be eligible for his entire pension if he died before you did. The QDRO says that “you will be treated as the surviving spouse,” which confirmed this idea. However, that phrase means that you are eligible to get benefits after he died, even though you were divorced and you were not technically a surviving spouse. It does not specify how much you will get. As we discussed today, the QDRO also states that you are eligible for only 50% of his benefit. The QDRO does not state that your amount goes up if your husband dies before he retires. QDROs divide the benefit permanently, and you are only entitled to your part of the benefit.

Even without a QDRO, federal law allows only 50% of the benefit to the survivor if the plan participant dies before retirement. Pensions are intended to provide wage replacement after you retire and can no longer work. If the person never reaches retirement, s/he does not need wage replacement. Once your ex-husband died, he was no longer eligible for a benefit, and that right and that benefit were extinguished. Even though you were not married to him when he died, you get your benefit as if you were an eligible surviving spouse, but only the 50% indicated in the QDRO.

For perspective, note that pension plans do not maintain individual accounts for each person who is entitled to benefits. They have a trust account. When someone applies, the plan determines eligibility according to that person’s records and their pension rules. It is similar to auto insurance. If you never have an accident, and never get an insurance payout, you have not lost anything because the deal was to cover you if and when you had an accident. Even though you paid all those premiums all those years, you are not losing anything because you needed the security that the insurance would be there if you needed it. You did not know in advance that you would never have an accident and did not need to pay the premiums. The pension would have been there if he had needed it, and he did not have to pay into it. He did not know he would die

*Helping with Pension and Retirement Benefit Problems in  
Indiana, Kentucky, Michigan, Ohio, Pennsylvania and Tennessee*

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before he retired, so that you could have been awarded 100% of the pension in your QDRO. Unfortunately, he never did need it, and the money stays in the trust account for everyone else who is eligible.

I am sorry I could not obtain additional benefits for you. At this time, I will close your case. Note that we will destroy your file after 5 years. If you need something from your file, please make your request before 4/16/2020. Feel free to call me with any questions you may have, and thank-you for using the Mid-America Pension Rights Project.

Sincerely,

Mid-America Pension Rights Project

Gail W. Webb  
Attorney at Law

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Indiana, Kentucky, Michigan, Ohio, Pennsylvania and Tennessee*

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Funded by the United States Administration on Aging

May 5, 2015

Mr. Client  
Center St.  
Somewhere, PA 18640

***Re: pension benefits***

Dear Mr. Client:

I have received and reviewed the documents you sent me. I am returning them to you with this letter. Your documents included the pension fund's Claim Review Report, which denied your appeal. This report also states that no further administrative appeals can be made to the fund, and that your next step would be to sue the fund in federal court. This means that you have exhausted your administrative appeals, and that your only option is to take on the expense of litigation. Since my grant does not allow me to litigate on behalf of clients, I cannot assist you with a federal court lawsuit. Since I am not a litigator, I am also unable to advise you as to your realistic chance of success or the cost involved.

However, after reviewing your documents, it is my opinion that this report has many valid arguments which I doubt you can overcome in court. You told me that the main issue is what happened in 1986. The pension plan went from E to F on August 1. The plan claims that all of 1986 must be credited under Plan E. They quote Article III Section (d) of the CFA at pages 14-15. It is my legal opinion that this is a reasonable interpretation of the plan. Note also that the plan has discretion to interpret the plan. An example of a case where no discretion is allowed would be in cases where the issue is the number of years of service required for benefits or whether the participant had 1000 hours in a particular year. When the answer is less black and white, the court will uphold the plan's decision if it is at all reasonable. This gives them the power to decide which plan provisions apply, how they are interpreted as a whole, and to apply the rules to the facts as they see fit. This creates a heavy burden for litigants to overcome in court.

In your case, the fund argues that there is a specific plan section which requires them to deny your claim. Even if we stipulate that the result is not so clear, the plan would still have the benefit of discretion and the court would probably rule in their favor.

You also told me that others have not experienced the same pension calculation that has been applied to you and that their benefits are more than yours when they should be less. I cannot address that issue since I do not have the facts of their situations, although I do know that their service records must differ from yours in varying degrees.

I am sorry I cannot help you with this matter. At this time, I will close your case. Note that we retain documents for five years and then destroy them. If you would like to request something from your file, please make your request by April 15, 2020. Feel free to call me with any questions you may have, and thank-you for using the Mid-America Pension Rights Project.

Sincerely,

Mid-America Pension Rights Project

Gail W. Webb  
Attorney at Law



April 29, 2015

Client  
Address

***Re:pension benefits***

Dear Mr. Client:

I received the documents you sent to me which show how many hours you worked at the County of Lebanon each year. Your documents show that you only worked 1000 hours in the years 2009 and 2010. You did have over 500 hours but less than 1000 hours in 2001, 2002, 2004-2012. Since you only had 2 years with over one thousand hours, the plan denied your claim.

Pension plan administrators are legally required to follow the exact rules of the plan. If they made an exception for you and gave you a pension when you did not qualify under the rules, that means that could make an exception to take away someone's pension who does qualify. The company would also fail to qualify for special tax breaks and end up with a huge IRS bill. For these reasons, the plan must follow the rules and cannot make exceptions.

I have reviewed the plan rules. Your plan does require 5 years of at least 1000 hours per year for pension eligibility. I am enclosing a copy of the pages from the plan which state these rules. These rules appear in many pension plans and are legal.

When you apply these rules to your hours, you can see that only two of your years at the county counted as pension service, the years you worked 1000 hours in 2009 and 2010. You do not have the necessary 5 years of credit for a pension. You did have over 500 hours but less than 1000 hours in 2001, 2002, 2004-2012. None of those years counted toward your pension. You cannot combine hour totals in different years for pension credit.

I am sorry we were unable to obtain benefits for you. At this time, I will close your case. Note that we retain files for 5 years and then destroy them. If you would like any documents from your file, please make your request before April 28, 2020. Please call me with any questions you may have, and thank-you for using the Mid-America Pension Rights Project.

Sincerely,

Mid-America Pension Rights Project