DFAS-HGA/CL 2 Dec 2015
Garnishment Operations
P.O. Box 99802
Cleveland, OH 44199-8002

Dear DFAS Legal Counsel,

When dealing with division of military retirements due to divorce, many court orders use the Hypothetical Method published in the 7 Mar 2014 DFAS document titled "Guidance on Dividing Military Retired Pay."

Hypothetical is an important method because it is the only DFAS method that answers the 2001 DoD USFSPA Report to Congress recommendation that promotion and longevity enhancements after divorce should not be divided. The report says, "Congress should amend the USFSPA to provide that all awards of military retired pay be based on the member's rank and years of service at the time of divorce … *DFAS should include a formula in its recommendations that could be used by parties who divorce while the member is still on active duty*." Additionally, state statutes such as Oklahoma SB1951 require promotion and longevity earned after a marriage are not be divided. Lastly, every state allows that assets brought into the marriage (including retirement longevity and rank) are not divisible. *For all these reasons, DFAS needs to publish a capable method.*

I would like to present a much simpler Area Method (AM) that is a plug-n-play replacement for the Hypothetical Method, plus it has a number of advantages. After reading this letter, I think you'll agree that AM is good enough to replace the Hypothetical Method.

The AM method is introduced at http://blog.increa.com/2011/dual-coverture-vs-hypothetical-method/. If you desire, following links on that page will take to you encyclopedic volumes of technical information, legal discussion, mathematics, and reference documents. This letter is much shorter; it has four parts:

1. ADVANTAGES Describe AM advantages over Hypothetical Method.
2. DESCRIPTION Document AM using a visual aid.
3. COMPARISON Demonstrate that AM and Hypothetical give the same result.
4. REFERENCE GUIDES & AIDS Provide selection charts and tables.

ADVANTAGES

- AM gives the same results as DFAS Hypothetical Method.
- AM can set aside military time both after and BEFORE marriage, in case

military duty was done before the marriage started. Hypothetical cannot do this.

- AM treats both the military member and the ex-spouse the same regarding time value adjustments to retirement. There would be no more COLA inequity where ex-spouse benefits from COLA and the military member benefits from pay chart raises (they're different).
- AM can divide retirements when there are more than one spouse. Hypothetical cannot do this.
- AM protects ex-spouse from pre-marital set aside at higher rank. Hypothetical cannot do this.
- AM works the same for Active Duty or Reserve retirements and no matter when a service member enlisted, whereas Hypothetical has confusing variations that must be used.
- The actual AM legal text is cut-n-paste with only 3 numbers, ensuring DFAS receives executable division orders the *first* time.
- AM uses something attorneys and courts are familiar with. It's a simple coverture fraction. The numerator of the division fraction is always a single number. The denominator is two simple numbers for DFAS to insert upon retirement.
- AM is a single 1-step math formula instead of a 3-4 step process requiring complicated manual calculations such as High-3 base pay COLA aggregations.
- AM is centered around a visual representation that is simpler for lawyers and attorneys to understand. This is a *big* issue that avoids costs of appeals and avoid convoluted orders DFAS has to deal with.
- AM treats the military member's first year 1% reduction of retirement and CSB/REDUX equitably. Hypothetical Methods inequitably do not tell attorneys to do these calculations for the ex-spouses hypothetical amount.

AREA METHOD DESCRIPTION

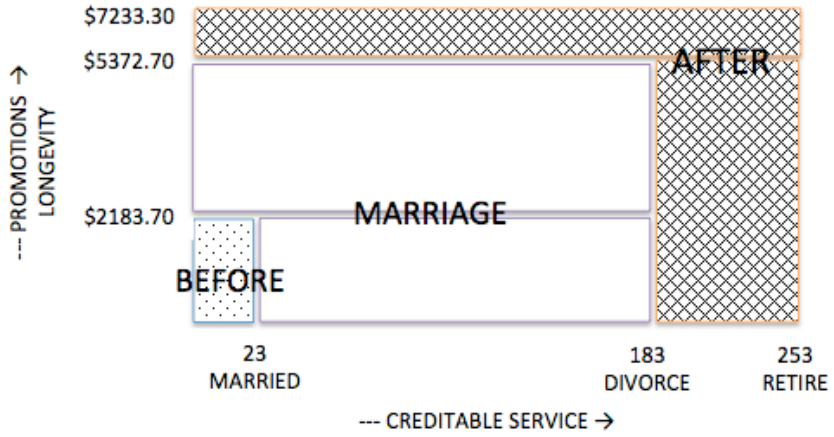
A retirement asset value can be visualized as an area. The idea of an area diagram (multiplying two numbers together) works because a product of the two numbers is how a military retirement is calculated.

(2.5% * base pay) * (duty years)

An imaginary military person is created for an example in this document. The imaginary military member got married as a 1 yr 11 mo O-1. Divorced as a 15 yr 3 mo O-4 in June 2003. After divorce, promoted to O-5 and O-6 and retired in April 2010, after 21 yr 1 mo. Here is a summary of the numbers:

Date	Rank	Longevity (yr)	Chart Year	Base Pay	Duty Months	Area
Feb-90	O-1	2	2003	2183.70	23.00	50225
Jun-03	O-2	15	2003	5372.70	183.00	983204
Apr-10	O-6	21	2003	7233.30	253.00	1830025
Apr-10	O-6	21	2010	9095.70	253.00	n/a

Using these numbers, the Area Method diagram looks like this:



The vertical axis of the diagram is base pay. All base pay numbers are taken from the same year pay chart, available at http://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html. I arbitrarily used the 2003 pay chart because it was handy to make the diagram. Any year pay chart will give the same coverture fraction so long as the *same year is used for all lookups*.

The horizontal axis is duty months of retirement service credit, or for a Reserve military member, the horizontal axis is retirement duty points/30.

The coverture fraction is the marriage area divided by the total area – that's the white area divided by the total area. Putting in the numbers from the above table yields the spousal fraction DFAS needs in a division order.

AM Numerator (married area) = 983204 – 50225 => 932979
AM Denominator (total area) = 1830025
50% * 932979 / 1830025 => **25.49**%

That's it. Easy to understand and fast!

In a legal court order, the AM method would be written like this for an Active Duty person not yet retired:

> "The former spouse is awarded a percentage of the disposable military retired pay, to be computed by multiplying **50%** times a fraction, the numerator of which is **932,976** and the denominator is the member's total number of months creditable service for retirement times base pay upon retirement. Base pay is looked up on a **2003** chart."

The court order needs to customize the bolded numbers above: percentage, the numerator, and the year pay chart used. Upon retirement, DFAS plugs in the months of retirement service credit (points/30 for a Reservist) and the retirement basepay on the same year chart and calculates the spousal percentage. QED.

COMPARISON OF AREA METHOD AND HYPOTHETICAL

This section shows that AM and Hypothetical give the same result when there is no duty prior to marriage. You can download a spreadsheet to automate all these calculations from http://www.increa.com/articles/division-dcv-practicum/DFAS-demo-Area-Method.xls.

Hypothetical cannot do military duty before marriage, so the two methods cannot match in that case. In order to get a match, the Area Method has to be re-done *incorrectly* failing to set aside the pre-marital asset from division. It's easy to do it again subtracting zero:

> AM Numerator (married area) = 983204 - 0
> AM Denominator (total area) = 1830025
> 50% * 983204 / 1830025 => **26.86**% ex-spouse fraction.

Now let's see if Hypothetical matches the simple AM method. For Hypothetical, the legal language could say:

> "The former spouse is awarded, as her sole and separate property, **50%** of the disposable military retired pay the member would have received had the member retired with a retired pay base of **$5372.70** with **15 yr 3 mo** of creditable service on **17 June 2003**."

Below, I'll follow the Hypothetical numbered step-by-step instructions given in the DFAS guide.

Step 2(a) Hypothetical retirement in 2003 is 2.5% * 15.25 yr * $5372.70 => $2048.34

Step 2(b) COLA adjustments from https://www.ssa.gov/news/cola/automatic-

cola.htm. Multiply all the years together to get the COLA total increase. Notice for the given years, the military pay chart increase for the same period is 1.257, so the ex-spouse receives slightly less than equitable from COLA (a problem of the Hypothetical Method).

2004	1.021
2005	1.027
2006	1.041
2007	1.033
2008	1.023
2009	1.058
2010	1.000
COLA TOTAL	1.220
MILRAISES	1.257

Adjusted hypothetical $2048.34 * 1.220 => $2499.83

Step 2(c) Calculate percentage
Actual retirement in 2010 = 2.5% * 21.0833 yr * $9095.70 => $4794.19
Percentage = 50% * $2499.83 / $4794.19 => **26.07%** ex-spouse fraction.

Hypothetical 26.07% almost matches the Area Method 26.86%. The only difference is that Hypothetical slightly damages the ex-spouse by giving COLA to the ex-spouse while giving Military raises to the member. This is a *second* problem with the Hypothetical Method in addition to not setting aside pre-marital contributions. Using 1.257 instead of 1.220 as the multiplier in step 2(b) would give 26.07% * 1.257 / 1.220 => **26.86%**, a perfect match.

You can download a spreadsheet to automate all these calculations from http://www.increa.com/articles/division-dcv-practicum/DFAS-demo-Area-Method.xls.

REFERENCE GUIDES AND AIDS

The demonstration above included only one imaginary situation. The four tables below help do the right method for your situation. The Area Method is always correct – others not so much.

Selection of Military Retirement Division Method
(military not retired at divorce)

Method of Division →	**Area Method**	**Dual Coverture**	**Hypothetical Method**	**Single time Coverture Fraction**
Active Duty and Reserve?	Yes	Yes	Yes, 6 versions confuse courts	Yes
Time-value of money after payments start?	Both receive military pay raises.	Both receive military pay raises.	Both receive military pay raises.	Both receive military pay raises.
Time-value of money after divorce before payments start?	Both receive military pay raises.	Both receive military pay raises.	Spouses treated differently – military receives military pay raises; ex-spouse receives COLA.	Both receive military pay raises.
Avoids hand-calculation of COLA and High-3 and REDUX?	Yes	Yes	No	Yes
Post-marriage merit promotion enhancement to only military member, per Appellate courts and DoD report to Congress?	Yes	Yes	Yes	No
Able to set aside service credit pre-existing the marriage (required in many states)	Yes	Yes	No	Yes
Able to set aside promotion value pre-existing the marriage?	Yes	No	No	No
Protects ex-spouse from pre-marital set aside at higher rank?	Yes	No	No	No
Handles division for multiple spouses?	Yes	No	No	Yes

Legal Language and Where to Get Numbers

Replace the bolded numbers with your specific numbers according to the notes.

Area Method

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying **50**% times a coverture fraction, the numerator of which is **932976**, and the denominator is the member's total number of months creditable service for retirement times base pay upon retirement. Base pay for this formula will be looked up on the **2009** year pay chart. *Reserve months are retirement points divided by 30."*

- 50% is normal; use whatever court orders.
- Numerator is calculated according to life-story table below.
- Year must match whatever chart was used to calculate the numerator.
- Include the last sentence only if a Reserve retirement may be possible.

Dual Coverture

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying **50**% times two coverture fractions. The first numerator of which is **34 months**, the first denominator is the member's total number of duty months for retirement. The second numerator is **$1321.82**, and the second denominator is the member's base pay upon retirement. Base pay for this formula will be looked up on the **2009** year pay chart. *Reserve months are retirement points divided by 30.*"

- 50% is normal; use whatever court orders.
- First numerator is months of married military.
- Second numerator is base pay of member upon divorce.
- Year must match whatever chart was used to calculate the numerator.
- Include the last sentence only if a Reserve retirement may be possible.

Hypothetical Method

"The former spouse is awarded **50%** of the disposable military retired pay the member would have received had the member retired with a retired pay base of **$2300.00** and with **12.417 years** of creditable service on **2 January 2008**."

- 50% is normal; use whatever court orders.
- Base Pay must be hand-calculated by member, attorney, or court from pay charts at time of divorce, adjusted for High-3, 1%, REDUX.
- Time is years of creditable service at time of divorce; for a Reservist, years = points/360, or months = points/30.
- Date is date of separation or divorce (when ex-spouse stopped contributing to the military retirement effort).

- PDF Pages 16-17, 22-23 of the 2014 DFAS guide[1] give 6 different texts depending on specific situations, which tends to confuse courts and attorneys. Text here is the most general purpose.

Single Time Coverture

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying **50%** times a coverture fraction, the numerator of which is **59 months**, and the denominator is the member's total number of duty months for retirement. *Reserve months are retirement points divided by 30.*"

- 50% is normal; use whatever court orders.
- Numerator is months of married military.
- Include the last sentence only if a Reserve retirement may be possible.

Area Method can handle any life situation, unlike the other methods. For each case, the numerator will be a single number calculated differently according to the table below, and the denominator stays the same as above. Use the text to describe the white "marriage" portion of the diagram in the numerator. Multiple spouses can also be handled with AM; if interested please contact me.

Area Method
How to Calculate Numerators

Sequence of Life	Area Method Numerator
married – military – retired – divorced	No fraction required; coverture = 1.00
married – military – divorced – retired	Retirement base pay at divorce times retirement service credit at divorce.
military – married – retired – divorced (this is the imaginary case above)	Retirement base pay times retirement service credit, minus base pay at marriage times retirement service credit at marriage.
military – married – divorced – retired	Retirement base pay at divorce times service credit at divorce, minus base pay at marriage times retirement service credit at marriage.

The denominator will always be member's total number of months creditable service for retirement times base pay upon retirement (looked up on the same year pay chart used for the numerator).

[1] The DFAS 2014 has broken formatting and is difficult to read. The 2012 guide is much more readable, with equivalent text on pages 11-13, 17-18.

Translation from DFAS Examples

DFAS Published Example	Area Method giving the same result
Fixed Dollar	N/A – percentage calculation not required (just state dollar amount).
Fixed Percentage	N/A – percentage calculation not required (just state percentage).
Formula Example 2	married – military – divorce - retired
Formula Example 3	married – military – divorce - retired
Hypothetical Example 4 & 7	married – military – divorce - retired
Hypothetical Example 5 & 8	married – military – divorce - retired
Hypothetical Example 6 & 9	married – military – divorce - retired
Hypothetical unable (no examples)	military – married – retired – divorced
Hypothetical unable (no examples)	military – married – divorced – retired

The entire point of any "method" or "formula" is to calculate a single spousal percentage number. The Area method calculates the same percentage number, only simpler.

I think the Area Method will benefit all parties to a divorce because it is so transparent and equitable. It will save significant costs for both parties and DFAS will benefit because division orders will be clear the first time and easy to calculate!

If you agree that the Area Method is a fantastic modernization of how military retirements are divided for divorce, please consider co-publishing with me in appropriate legal venues. Please also publish in the next edition of the DFAS Guidance to Attorneys and make the method available on your web pages.

Please let me know how I can help.

Sincerely,

Dr. Brian Mork, Col, USAFR