**Section 400.600 General**

a) Introduction

1) This Subpart F is applicable only to courts-martial. It is not applicable to nonjudicial punishment, administrative boards, promotion boards, medical retention boards, retention boards, or investigations and/or actions pertaining to nonpunitive or administrative punishment.

2) This Subpart is also maintained in a publication titled Illinois Military Rules of Evidence that is organized to coincide with the federal Military Rules of Evidence (MCM Part III). In this Subpart, the parenthetical cross-reference at the end of a body of text labeled Il. Mil. R. Evid. reflects the numbering system applied to these policies in that publication.

b) Scope of Rules

1) This Subpart applies to general and special court-martial proceedings.

2) In the absence of guidance in this Manual, courts-martial will apply Illinois State Rules of Evidence except as provided in subsection (b)(3). The reviewing courts may look to general military case law in applying these rules of evidence, with particular emphasis on military offenses.

3) Cases Arising in a State Other Than Illinois. In any court-martial arising out of conduct in a state other than Illinois, evidence derived from an investigation conducted in that State is not inadmissible under this Subpart, provided that the evidence was lawfully obtained and would be admissible under the laws of that state. (Il. Mil. R. Evid. 101)

c) Purpose. This Subpart shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. (Il. Mil. R. Evid. 102)

d) Rulings on the Evidence

1) Effect of Erroneous Ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless the ruling materially prejudices a substantial right of a party and:

A) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

B) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Once the military judge makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. The standard provided in this subsection (d)(1)(B) does not apply to errors involving requirements imposed by the Constitution of the United States or the Constitution of the State of Illinois as applied to members of the armed forces unless the error arises under this Subpart and this subsection (d)(1)(B) provides a standard that is more advantageous to the accused than the constitutional standard.

2) Record of Offer and Ruling. The military judge may add any other or further statement that shows the character of the evidence, the form in which it was offered, the objection made, and the ruling. The military judge may direct the making of an offer in question and answer form.

3) Hearing of Members. In a court-martial composed of a military judge and members, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the members by any means, such as making statements or offers of proof or asking questions in the hearing of the members.

4) Plain Error. Nothing in this subsection (d) precludes taking notice of plain errors that materially prejudice substantial rights that were not brought to the attention of the military judge. (Il. Mil. R. Evid. 104)

e) Preliminary Questions

1) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, the admissibility of evidence, an application for a continuance, or the availability of a witness shall be determined by the military judge. In making these determinations, the military judge is not bound by the rules of evidence, except those with respect to privileges.

2) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the military judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge, except when this Manual provides expressly to the contrary.

3) Hearing of Members. Except in cases tried before a special court-martial without a military judge, hearings on the admissibility of statements of an accused under Sections 400.610 through 400.630 shall, in all cases, be conducted out of the hearing of the members. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if the accused so requests.

4) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination with regard to other issues in the case.

5) Weight and Credibility. This subsection (e) does not limit the right of a party to introduce before the members evidence relevant to weight or credibility. (Il. Mil. R. Evid. 104)

f) Limited Admissibility

When evidence that is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the military judge, upon request, shall restrict the evidence to its proper scope and instruct the members accordingly. (Il. Mil. R. Evid 105)

g) Remainder of, or Related, Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require that party at that time to introduce any other part or any other writing or recorded statement that, in fairness, should be considered contemporaneously with it. (Il. Mil. R. Evid. 106)