

3-16-2010

# Attorney Admissions Ceremony — United States District Court for the Northern District of New York

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## Recommended Citation

Miner '56, Roger J., "Attorney Admissions Ceremony — United States District Court for the Northern District of New York" (2010). *Bar Admissions*. 2.  
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Roger J. Miner  
U.S. Circuit Judge

**Attorney Admissions Ceremony  
United States District Court for  
the Northern District of New York**

**March 16, 2010**

Thank you, Chief Judge Mordue. I am happy to be here on this occasion. At my age, I am happy to be anywhere on any occasion. Along that line, I overheard the conversation of two lawyers in the hallway as I walked by the other day. One said: "Isn't that the former Judge Miner?" The other said: "I heard that he was a pretty good judge during his lifetime." I would like to make it clear that I still am on the scene.

Today, I join Chief Judge Mordue and all the other judges of the United States District Court for the Northern District of New York in welcoming our new members to the Northern District Bar and to the James T. Foley United States Courthouse. I urge the new members to tour this courthouse. It is a fascinating building -- the crown jewel of Northern District courthouses. I have had chambers here for nearly thirty years, the first four as a District Judge and the remaining years as a Circuit Judge, and am always amazed by this structure.

Completed in 1934, the building is said to be a fusion of Classical and Art Deco styles. Designed for use as a post office, customhouse, and courthouse, the three friezes on the outside walls include depictions of the activities for which the

building was designed. Carved in marble in the frieze fronting Broadway are depictions of individual letter carriers and the various modes of transportation used to deliver the mail. At the north end of the building, the frieze depicts the activities of a customhouse, including cargo inspection, immigration interviews and passport issuance. The frieze at the south end of the building portrays a jury trial.

You will also find very rewarding an inspection of the interior of the building, especially the public vestibules at each end of the first floor, the stairwells, and the main lobby on the first floor. Of interest in each of the public vestibules are the four light standards and the plaques above each standard displaying various forms of transportation. The stairwells are cast aluminum, and within the railing design are ornamental panels displaying an airplane, the scales of justice, and the official New York animal -- the beaver. Special attention should be paid to the lobby on the first floor. It contains nine ceiling maps painted in oil on canvas. Separating the maps are relief sculptures of postage stamps depicting famous Americans.

The first floor lobby now serves the additional courtrooms built in recent years. When I first established chambers at this courthouse in 1981, the main Albany post office was located on the first floor. Some mailboxes and other mementos of the post office can still be seen in the first floor lobby. The FBI at that time occupied the entire fifth floor, and a number of other federal agencies made their homes in this building back then.

Today, the proliferation of federal litigation has resulted in this building becoming essentially a courthouse -- the post office, customs, FBI, and other agencies having relocated to accommodate the courts.

The first floor lobby now includes the portraits of most of the judges who have served on the Northern District bench, including James T. Foley, after whom this building is named. Judge Foley served here from 1949 until 1990, a period of forty-one years. During most of that time, he was the only District Judge serving in Albany, having presided as Chief Judge of the District from 1963 until 1980. After he took Senior Status in 1980, I came on board as an active District Judge in 1981. Besides the two of us, there were two active judges based in Syracuse and a Senior District Judge based in Auburn.

Jim Foley was my mentor, and I much enjoyed learning from him. He was a judge's judge and was highly regarded by the bar and by his colleagues during his entire period of service. He decided all his cases with compassion, understanding, patience, fundamental fairness, good grace, and with great learning and scholarship. This courthouse was named for him by an Act of Congress in 1988, and I was privileged to participate in the dedication ceremony. Judge Foley said that he was happy to be present on that occasion, since such dedications are usually accomplished posthumously. There is a plaque at the entrance door at the south end commemorating the dedication of the building. It includes a description of Judge Foley as "a warm

and enduring presence in this Capital City of Albany." He certainly was all of that. The words have been attributed to Albany's Pulitzer Prize winning author, William Kennedy.

Judge Foley did not give high value to service on the appellate bench. When he learned of my appointment to the Second Circuit Court of Appeals, he told me that I would be one-third of a judge there. He was right about that. I think that it was Judge Foley who compared appellate judges to soldiers who come onto the battlefield after the battle and shoot the wounded. Judge Foley often regaled me with stories of the past. He was a great historian, and he encouraged me to write the History of the United States District Court for the Northern District of New York. In collaboration with my wife, who is a professional historian, I did so. The history really begins with President Washington's appointment of James Duane, Mayor of the City of New York and founder of Duanesburg, as United States District Judge for the District of New York.

This court has a rich and exceptionally interesting history. I urge you to read all about it. From it, you will learn that you have become a member of a distinguished bar of a most distinguished court. Although I admit to being somewhat biased, I think that the Northern District Judges are the very best in the Circuit. They are seldom reversed, and I ask that you bear that in mind when you contemplate appeals. Also, it saves me some work.

In your verified petitions for admission to practice in this

court, you have asserted that you have read and are familiar with the Federal Judicial Code, as well as the Federal Rules governing Civil Procedure, Criminal Procedure, and Evidence. The judges here have been kind to you today. Many lawyers still remember the questions I put to them as they sought admission to the bar of this court. As a District Judge, I sought to test familiarity with federal practice, which is different in many ways from state practice. I asked one lawyer what he was thinking as he hesitated when I questioned him about pendent jurisdiction. He said: "I am thinking that I will not be admitted today." By the way, "pendent jurisdiction" is now known as "supplemental jurisdiction."

I do recommend that you review the appropriate rules before undertaking litigation in the District Court. It will save much embarrassment and extra work. All of those rules are available to you. Judge Foley told me that when he first came on as a Judge, Chief Judge Brennan had the only copy of the local rules. He kept the copy in his shirt pocket, and whenever a lawyer appeared before him to argue on one point or another, he would pull out the rules and say: "The rules do not permit that." Do familiarize yourselves with the local rules and with all the rules governing federal practice.

There is one message that I would like to leave with you. In the online packet of materials relating to your application for membership in the bar of this court, there is an item entitled: "Civility in Litigation: A Voluntary Commitment." I

suggest to you that the commitment required is not entirely voluntary. A lack of civility can lead to serious consequences in federal practice. We all know that admission to the bar carries heavy responsibilities along with its privileges. A lawyer has obligations toward his client, toward the court, and toward her brothers and sisters at the bar. In the course of her argument of an appeal before a panel of which I was a member, an attorney said: "I would do anything for a client." I had to stop her short, pointing out that such a commitment is far too broad. There are restrictions. A client is owed complete loyalty, honesty, diligence, competence, and the very best representation you can provide. But there are other obligations, and sometimes they are in tension with each other.

In discharging her duties to the court, the lawyer must not misrepresent the facts or the law, or present false evidence, must comply with the orders of the court, must be dignified and courteous and avoid disruptive conduct and must disclose controlling legal authority even if adverse to the client. The lawyer must go so far as to undertake remedial measures when she comes to know that a client has testified falsely or has engaged in criminal or fraudulent conduct related to a proceeding.

To colleagues at the bar, the attorney owes a duty of fairness, a duty to refrain from concealing that which the law requires to be revealed, a duty to be truthful, a duty to avoid the use of means that have no purpose other than to delay or prolong the proceeding or cause needless expense. In my view,

the ethical duty of civility to colleagues is an enforceable obligation of the profession. It always pains me to see lawyers who are disrespectful to colleagues because they think they are thereby serving their clients. Nothing could be further from the truth. Some clients do believe that it is a lawyer's job to display hatred and contempt for opposing counsel and her client. Some clients think that the needs and desires of the opposition should be thwarted in any possible way. But one does not do everything that a client wishes.

Back in my days of practice, I had a client who took me to task for agreeing to an adjournment of a deposition. The client advised me in no uncertain terms that he regarded the accommodation as a betrayal of his trust and threatened to fire me as his attorney. I explained to him that the adjournment was something that was within my discretion as a lawyer. He had a hard time accepting that, but a client must know that a number of things are confided to the attorney alone. For example, my court has held that "decisions concerning which legal issues will be argued on appeal are uniquely within the lawyer's skill and competence, and their resolution is ultimately left to his judgment." So too must a client be aware that decisions involving the treatment of opposing counsel is not his concern.

The new Rules of Professional Conduct adopted in New York contain a rule entitled "Scope of Representation and Allocation of Authority Between Client and Lawyer." Among the subsections relating to the allocation of authority is this one: "A lawyer

may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal." You do not do everything for a client, and you certainly do not mistreat a colleague at your client's behest. The Allocation Rule also provides: "A lawyer does not violate this Rule by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, and by treating with courtesy and consideration all persons involved in the legal process." Civility toward colleagues is a professional and ethical obligation. The failure to fulfill that obligation has consequences in the federal system.

Title 28 of the United States Code contains a provision that "[a]ny attorney . . . admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required . . . to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." An attorney who rejects a colleague's request for a reasonable adjournment of a deposition or continuance of a hearing, or who holds back on a discovery request simply to gain a tactical advantage, and thereby requires his adversary to undertake motion practice, can easily run afoul of the Rule and call forth the wrath of the court.

An attorney who defers to her client with regard to matters allocated to the attorney may also run afoul of Rule 11 of the Federal Rules of Civil Procedure, which requires that written

presentations to the court must not be "presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Rule 11, as well as the inherent power of the federal courts, allows for sanctions for this sort of bad faith conduct to be imposed upon both attorney and client. But sanctions should not be necessary to enforce civility toward colleagues.

The performance of duties lawyers owe to one another -- honesty, fair dealing, cooperation and respect -- is essential to the success of the enterprise in which we all are joined -- the enterprise of justice. We congratulate you on your admission to practice here and eagerly await your contributions to the enterprise.