U.S. judge is optimistic on appeals court bid

By Shirley Armstrong

Federal Judge Roger J. Miner, a candidate for a seat on the Second Circuit, U.S. Court of Appeals, said this week he had received “encouraging word” from the U.S. Justice Department, which interviewed him two weeks ago.

Though clearance by the FBI and State Bar Association, presidential nomination and Senate confirmation are prerequisites for appointment, Miner, the only active judge in the Northern New York district assigned to Albany, said it appears he has passed muster by Justice, and might be appointed within “several months.”

U.S. Magistrate Ralph Smith Jr., who has served since April 1982 as the district’s first full-time magistrate, said this week he is “interested” in a federal judgeship.

Smith, 48, a Republican, previously was district attorney of Albany County, special state attorney general serving as head of the Albany office of the special nursing home prosecutor and acting director of the State Organized Crime Task Force.

Miner, 50, a Republican, resides in Hudson and is a former Columbia County district attorney and former State Supreme Court justice. He was named to the federal judgeship in 1981.

Miner said Tuesday that if he does move up, he will hope to return to Albany occasionally to preside over cases in the busy district. Circuit court judges, he said, are allowed to function as district judges, and “I’d like to keep a hand in” on proceedings at that level.

His optimism about “a step up,” Miner said, is based on a request by the Justice Department that he send certain information to the Bar Association and notification that he will be investigated by the Federal Bureau of Investigation.

“That’s usually a good stage to be at,” said Miner, adding that he was virtually assured of his present post at that point in proceedings three years ago.

The investigations, Miner said, “should not take as long this time, since only three years ago, I was checked by both.” He quipped: “Since then I haven’t done anything but work.”

Speculating that the appointment could be made within a few months, Miner said “the people at Justice told me the attorney general has made it a goal to fill vacancies before the summer recess of Congress.”

Miner’s promotion would leave two vacancies on the bench in the 32-county Northern District. The other is a full-time judgeship, authorized but not yet filled, though Thomas J. McEvoy, a Broome County legislator, has been recommended for the $76,000-a-year lifetime position.

Active judges in the district are Miner and Chief Judge Howard G. Munson and Judge Neal McCurn, both of Syracuse. The latter, who had been considered a prime candidate for a State Court of Appeals judgeship, was passed over Tuesday when Gov. Mario M. Cuomo named Vito J. Tittone of Staten Island to that office.

Also serving in the federal court district — as retirees from active practice but presiding over cases of their choice as senior judges — are, Judges James T. Foley of Albany and Edmund Port of Auburn.