

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

June 15, 1961

HARVEY M. JOHNSEN
CHIEF JUDGE

Honorable Charles J. Vogel
Honorable Martin D. Van Oosterhout
Honorable M. C. Matthes
Honorable Harry A. Blackmun

Re: No. 16, 451
Dyer v. Securities and
Exchange Commission

Dear Judges:

In this case, Judge Matthes and I made summary disposition of Dyer's attempt to have us review the refusal of the Commission to give him a hearing, doing so on the face of his petition for review and without having any record sent up by the Commission.

Each of you has, I am sure, a copy of the slip opinion, which is dated May 10, 1961, to which you can refer if you desire to do so.

My purpose in writing you now is to try to avoid a complication or a doubt in the situation if we can do so. Dyer, as has been the case in each one of his reviews, has filed a petition for rehearing of which he requests consideration by the court en banc. In all of the other Dyer cases where such a request has been made, the division which heard the case has made denial of it pursuant to our Rule 15(e). I am not certain, however, since Judge Matthes and I did not act as a constituted division of the court to hear and determine a case on its merits, whether we have power under the rule to make denial of Dyer's request for consideration of the petition for rehearing by the court en banc.

In the circumstances, I think it would be desirable to have the order show that his request for consideration of the petition for rehearing by the court en banc is by the court en banc denied. I am not asking you to give consideration to the merits of Dyer's petition as Judge Matthes and I will rule on that. You would simply be acting in relation to the procedural question as to whether the court en banc is willing to entertain consideration of the petition for rehearing as Dyer requests.

Honorable Charles J. Vogel
Honorable Martin D. Van Oosterhout
Honorable M. C. Matthes
Honorable Harry A. Blackmun
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It has been my view that as to matters of summary disposition or on incidents of a pending case a quorum of the court has the right to act. If the case is to be heard and disposed of on its merits, a division of three judges is, of course, required unless the parties waive it.

I do not want to preclude any of you from reading and considering Dyer's petition for rehearing if you want to take the time and burden yourself to do so. I am sure that I would be most willing to pass him over to all of the rest of you at any time. If you are willing to act simply on the procedural question of making a denial of his request to have the court en banc consider his petition, I would appreciate it if you will advise me, and I will have the record so show.

Sincerely yours,

Harvey M. Johnsen

cc: Judge Gardner
Judge Sanborn