

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CUNNINGHAM v. HAMILTON COUNTY, OHIO**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

No. 98–727. Argued April 19, 1999– Decided June 14, 1999

When petitioner, an attorney representing a plaintiff, failed to comply with certain discovery orders, the Magistrate Judge granted the respondent's motion for sanctions against petitioner under Federal Rule of Civil Procedure 37(a)(4). The District Court affirmed the sanctions order and also disqualified petitioner as counsel. Although the District Court proceedings were ongoing, petitioner immediately appealed the order affirming the sanctions award. Because federal appellate court jurisdiction is ordinarily limited to appeals from "final decisions of the district courts," 28 U. S. C. §1291, the Sixth Circuit dismissed for lack of jurisdiction. It held that the sanctions order was not immediately appealable under the collateral order doctrine, which provides that certain orders may be appealed, notwithstanding the absence of final judgment, but only when they are conclusive, resolve important questions separate from the merits, and are effectively unreviewable on appeal from the final judgment in the underlying action, *e.g.*, *Swint v. Chambers County Comm'n*, 514 U. S. 35, 42. The court found these conditions unsatisfied because the issues involved in petitioner's appeal were not completely separate from the merits. Regarding petitioner's disqualification, the court held that a nonparticipating attorney, like a participating attorney, ordinarily must await final disposition of the underlying case before filing an appeal. It avoided deciding whether the order was effectively unreviewable absent an immediate appeal, but saw no reason why, after final judgment in the underlying case, a sanctioned attorney should be unable to appeal a sanctions order.

Held: An order imposing sanctions on an attorney pursuant to Rule 37(a)(4) is not a "final decision" under §1291, even where the attorney no longer represents a party in the case. Although the Rule 37 sanc-

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tion imposed on petitioner would not ordinarily be considered a “final decision” because it neither ended the litigation nor left the court only to execute its judgment, see, e.g., *Midland Asphalt Corp. v. United States*, 489 U. S. 794, 798, this Court has interpreted §1291 to permit jurisdiction over appeals that meet the conditions of the collateral order doctrine. Respondent conceded that the sanctions order was conclusive, so at least one of those conditions is presumed to have been satisfied. Appellate review of a Rule 37(a) sanctions order, however, cannot remain completely separate from the merits. See, e.g., *Van Cauwenberghe v. Biard*, 486 U. S. 517, 521–522. Here, some of the sanctions were based on the fact that petitioner provided partial responses and objections to some of the defendants’ discovery requests. To evaluate whether those sanctions were appropriate, an appellate court would have to assess the completeness of her responses. Such an inquiry would differ only marginally from an inquiry into the merits. Petitioner’s argument that a sanctions order is effectively unreviewable on appeal from a final judgment suffers from at least two flaws. First, it ignores the identity of interests between the attorney and client. The effective congruence of those interests counsels against treating attorneys like other nonparties, since attorneys assume an ethical obligation to serve their clients’ interests even where they might have a personal interest in seeking vindication from the sanctions order. See *Richardson-Merrell Inc. v. Koller*, 472 U. S. 424, 434–435. Second, unlike a contempt order, a Rule 37(a) sanctions order lacks any prospective effect and is not designed to compel compliance. To permit an immediate appeal would undermine the very purposes of Rule 37(a), which was designed to protect courts and opposing parties from delaying or harassing tactics during discovery, and would undermine trial judges’ discretion to structure a sanction in the most effective manner. Finally, a Rule 37 sanction’s appealability should not turn on an attorney’s continued participation, as such a rule could not be easily administered and may be subject to abuse. Although a sanctions order may sometimes impose hardship on an attorney, solutions other than an expansive interpretation of §1291’s “final decision” requirement remain available. Pp. 4–12.

144 F. 3d 418, affirmed.

THOMAS, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion.