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Beasley Allen Says NJ Justices Review Of Talc DQ 'Essential'

By **George Woolston**

Law360 (March 24, 2026, 4:32 PM EDT) -- Beasley Allen urged the New Jersey Supreme Court to hear its appeal of a lower court's decision to disqualify it from representing plaintiffs in multicounty litigation over Johnson & Johnson's talc-based baby powder, arguing that the court's immediate review of the interlocutory order is "essential."

The Alabama-based Beasley Allen Law Firm said Friday that the high court's intervention is necessary to prevent injury to the firm, its clients and "the administration of justice more broadly" given the first bellwether trial is scheduled to begin on April 14, and that the lower court's Feb. 6 **ruling** is causing confusion in the separate but concurrent federal multidistrict litigation.

"For these federal and state plaintiffs and their families, further delay means that even more victims will succumb to death from cancer before seeing their day in court. This court's immediate review of the Appellate Division's order disqualifying Beasley Allen is therefore essential," the firm said in its **brief** supporting its motion for leave for an interlocutory appeal.

Beasley Allen further argued the Appellate Division's decision disqualifying it from representing 435 clients who claim that their ovarian cancer was linked to J&J talc-based baby powder adopted "the broadest conceivable definition of 'associated'" under New Jersey's Rules for Professional Conduct 5.3, claiming that the ruling effectively makes it responsible for an alleged conflict of an unaffiliated entity as if it worked for the firm.

"The practical consequences of the Appellate Division's holding are far-reaching and troubling. Under its reasoning, any attorney who participates in court-ordered mediation or engages in settlement discussions could be deemed 'associated' with other parties, vendors, or consultants present in those proceedings, simply by virtue of working toward a common resolution," the firm said.

Beasley Allen said no legal authority in the United States supports such an interpretation, and that the relevant cases and disciplinary rulings reflect that the established understanding for "associated" under RPC 5.3 pertains to nonlawyers who are retained by or work for the lawyer in question.

As interpreted by the lower appeals court, the rule would have a chilling effect on participation in settlement and mediation efforts and "allow the ethics rules to become tools for litigation gamesmanship rather than professional regulation," Beasley Allen said.

A group of law professors filed an **amicus brief** in support of Beasley Allen's bid for an interlocutory appeal, arguing that the Appellate Division's decision stretches RPC 5.3 "beyond the breaking point."

The professors — Charles Silver of the University of Texas-Austin School of Law, Anthony Sebok of Cardozo School of Law, Jeffrey Hammond of Faulkner University, David Freeman Engstrom of Stanford Law School, Susan Donovan of the University of Alabama School of Law, John Browning of Faulkner University, and professor emerita Nancy Moore of Boston University School of Law — said the appellate court applied RPC 5.3 to someone who was neither a law firm employee nor under the firm's supervision for the first time in any tribunal. Onetime J&J outside counsel James Conlan and Beasley Allen only provided input on a settlement proposal during court-ordered mediation, the professors said, yet the appellate court treated Conlan as an assistant the firm should have supervised.

"And then, based on the actions of this unassociated non-assistant, the Appellate Division disqualified the firm — which represented more than 400 plaintiffs (some for more than a decade), had invested more than 50,000 hours in the litigation, and had two bellwether trials scheduled to occur in just seven weeks (now six weeks). If that is to be the law, the word should come from this court," the amicus brief said.

Earlier this month, J&J **argued** that the New Jersey Supreme Court should reject Beasley Allen's bid for leave to appeal to the high court, arguing that the firm cannot show it will be irreparably harmed if such an appeal is not granted.

It pointed to the number of other firms currently representing plaintiffs in the multicounty litigation and those that are readily able to do so.

The Appellate Division **denied** the firm's motion to stay its Feb. 6 decision disqualifying Beasley Allen from the multicounty litigation and the trial court's Feb. 9 order implementing the decision, as well as its motion for leave to appeal the trial court's Feb. 20 order denying the stay of its Feb. 9 order last week.

"To have Beasley Allen litigate cases in our trial courts when they have been disqualified would not be in the interest of justice," Appellate Judge Mark K. Chase said in the order.

J&J has been fighting since 2023 to remove Beasley Allen from the multicounty litigation, accusing firm attorney Andy Birchfield of having worked with former Faegre Drinker Biddle & Reath LLP lawyer James Conlan, a onetime J&J outside counsel, on the case.

Conlan had worked closely with J&J's vice president of litigation, Erik Haas, as outside counsel in the talc litigation, billing 1,600 hours on the sprawling case before departing Faegre Drinker to establish his own company, J&J argued.

Beasley Allen and firm attorney Andy Birchfield have argued that J&J is blaming them for the company twice failing to address thousands of talc injury claims through a Chapter 11 filing, and that Conlan has never shared any confidential or privileged information to them.

Atlantic County Superior Court Judge John Porto sided with Beasley Allen in July 2024, holding that, without evidence showing Conlan shared confidential information, he could not remove the firm from the case.

The Appellate Division reversed the trial court's ruling in February, holding that Conlan's access to J&J's privileged information, followed by his collaborative efforts with Beasley Allen, "leaves us with clear concern for the preservation of trust intrinsic to the attorney-client relationship," the opinion said.

Counsel for Beasley Allen, Jeffrey M. Pollock, said in a statement to Law360 on Tuesday that they believe the state high court will consider the case "because the Appellate Division's opinion significantly changed the Rules of Professional Conduct in a manner neither any other state nor the [American Bar Association] has agreed to."

"This was not a logical extension of the law, rather the Appellate Division created an RPC out of whole cloth," Pollock said.

A J&J spokesperson declined to comment Tuesday.

Birchfield and Beasley Allen are represented by Jeffrey M. Pollock of Pollock Law LLC.

The J&J parties are represented by Peter G. Verniero of Sills Cummis & Gross PC, Jessica L. Brennan of Barnes & Thornburg LLP and Stephen D. Brody of O'Melveny & Myers LLP.

The multicounty litigation appeal is In re: Talc-Based Powder Products Litigation, case number 091773, in the Supreme Court of the State of New Jersey.

--Additional reporting by Emily Sawicki and Jonathan Capriel. Editing by Linda Voorhis.

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