Two friends from college email you: they want to start a business together. Can you handle the paperwork? A family acquaintance calls you out of the blue: she wants to sue her bank—the same small community bank that handles your law firm's line of credit. A law school colleague who moved in-house at a local tech company finally calls to see if you can handle a small collection case. This could be a big opportunity—but the defendant is a small business you represented last year.

You would be forgiven for wanting to say "yes!" immediately. Whether you have your own practice or work at a law firm, the pressure to generate business is always present. However, each of the above scenarios implicates an actual or potential conflict of interest, and the Rules of Professional Conduct set forth specific requirements for undertaking new representations where such an actual or potential conflict exists.

Generally speaking, Rule 3-310 tells you how to proceed:

- An attorney is required to obtain informed written consent (after providing written disclosure of the facts and risks) before representing more than one client in a matter in which the interests of the clients potentially or actually conflict, representing clients who are adverse to each other in separate matters, or representing a client adverse to a former client where the lawyer has obtained confidential information material to the employment. Rule 3-310(C) & 3-310(E).
- An attorney is required to give written disclosure (of the facts and the resulting risks) when the lawyer has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; previously had such a relationship, and the relationship would substantially affect the representation; has a legal, business, financial, professional, or personal relationship with another person or entity that would be affected substantially by resolution of the matter; or if the lawyer themselves has or had a legal, business, financial, or professional interest in the subject matter of the representation. Rule 3-310(B).

How do these rules play out in real life? In scenario (1) above, your friends have a potential conflict of interest: the structure of the business could affect each of their rights. Accordingly, Rule 3-310(C)(1) requires informed written consent from each of your friends. In scenario (2), your firm has a business/financial relationship with the bank, and as a practical matter you rely on them for liquidity, so written disclosure to your new client is required under Rule 3-310(B)(1). And in scenario (3), depending on the work you did for the former client, you may be required to obtain informed written consent from both the former client and the new client under Rule 3-310(E), or at the very least you should provide written disclosure under Rule 3-310(B)(2) or (3).

This article just scratches the surface. If you are uncertain about how to proceed, you should research the issue thoroughly, ask a senior lawyer or mentor (while being careful to protect client confidences), and/or call the State Bar Ethics Hotline at 1-800-2-ETHICS (1-800-238-4427). Noncompliance with Rule 3-310 could subject you and your client to a disruptive and unpleasant disqualification motion, and could subject you to malpractice liability and/or a judgment requiring you to return all of the attorney's fees you received from the prohibited representation. It's better safe than sorry, for you and for your clients.