Pembitt further argues that the privilege

is inapplicable only when the attorneys serve "as mere conduits of information to be disclosed publicly" rather than as providers of legal advice, and that this distinction turns on the client's expectations of confidentiality. Id. at 18, 22 (citing Grand Jury 2003).

In the Fourth Circuit, "it is the unquestioned rule that the mere relationship of attorney-client does not warrant a presumption of confidentiality." United States v. (Under Seal),

> "the details underlying the published data are the communications relating the data, the document...to be published containing [illegible] drafts of the document, and any attorney's notes containing material necessary to the preparation of the document. Copies of other documents, the contents of which were necessary to the preparation of the published document will also lose the privilege."

United States v. (Under Seal), 748 F.2d at 875, n.7. However, "[if] [illegible] the non-privileged documents contain client communications not directly related to the published data, those communications, if otherwise privileged, must be removed by the reviewing court before the document may be produced." Id.

The determination of (1) what services the lawyer was employed to provide and (2) the client's understanding whether the information will be revealed to others are both matters of fact. Thus, unless the parties stipulate to those points or they are not contested, decisions on both points must be based on record evidence.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FILED

v. Misc. No. 3:14mc5