One of the Dispute Resolution Section’s most important functions is to provide ongoing policy leadership in the field of dispute resolution. The past several months have seen several developments in this regard, and I’d like to highlight important work recently done and underway.

Most significant, there has been a great deal of activity in the area of mandatory pre-dispute arbitration. This is an issue of increasing public awareness and concern, as evidenced by the recent series of articles in the New York Times. Section members hold diverse points of view on this issue. In response, the Section has been striving to find consensus where we can and provide resource information to decision makers when this might be helpful. This past fall, the Department of Health and Human Services proposed new regulations for long-term care facilities that, among other things, sought to increase protections for nursing home residents when facilities seek to include mandatory pre-dispute arbitration provisions in their agreements with residents. After study by a specially convened task force and building on existing ABA policy that opposes the use of mandatory pre-dispute arbitration as applied to the vulnerable population of nursing home residents, the Section was able to reach consensus on language suggesting stronger regulations opposing mandatory pre-dispute arbitration in this particular setting. The Section’s comments were adopted in the ABA’s submission to the agency. Final regulations are still under review.

The Consumer Financial Protection Bureau has also announced that it intends to issue regulations limiting the use of mandatory pre-dispute arbitration in consumer contracts and calling for increased transparency concerning the results of arbitration proceedings. The Section has again assembled a task force of arbitration experts to analyze these developments and make recommendations to the Section Council about appropriate responses. While reaching consensus in this arena may prove more difficult than in the nursing home context, Section leadership remains committed to addressing the issue productively.

On the mediation front, California is enmeshed in a controversy concerning proposed legislation to alter its strict mediation confidentiality statute to provide for an exception addressing claims of attorney misconduct. California law currently provides no such exception, and the state’s Law Revision Commission is recommending an amendment to the statute to address these concerns. Here again, Section members are not unanimous, but we have assembled a working group to ensure that the ultimate policy makers make fully informed choices as the law continues to develop. In this regard we are especially mindful of the key role the Section played in drafting and promoting the Uniform Mediation Act, which includes exceptions similar to those being proposed in California.

More broadly, the Section’s Task Force on Access to Justice has published a 20-page white paper with recommendations concerning how dispute resolution services can increase access to justice, including the roles attorneys representing clients can play and how technology may assist.

For the Section to stay relevant and fulfill its mission — which in our long-range-plan includes the obligation to convene, facilitate, and support innovative research, education, debate, and collaboration on dispute resolution policy and practices — we must find a way to engage with these and other key issues for our field, even if we do not have consensus. For too long, we have avoided controversial issues. At a minimum, I believe the Section should recommit to serving as a convener of dialogue on the major issues confronting our field, strive to find consensus wherever possible, and urge the ABA itself to comment when it can.

Updates on these issues and a plethora of programming on everything related to our field — from practice concerns to marketing to developments in dispute resolution theory — can be found at our Annual Spring Conference in New York, which will run from April 7 through April 9. With more than 100 educational sessions starting with pre-conference events on April 6 and ending with the Legal Educators Colloquium on April 9, the conference promises to be an event that should not be missed. Please take a look at the conference website (http://www.ambar.org/spring2016) and sign up today. We look forward to seeing you in New York!

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