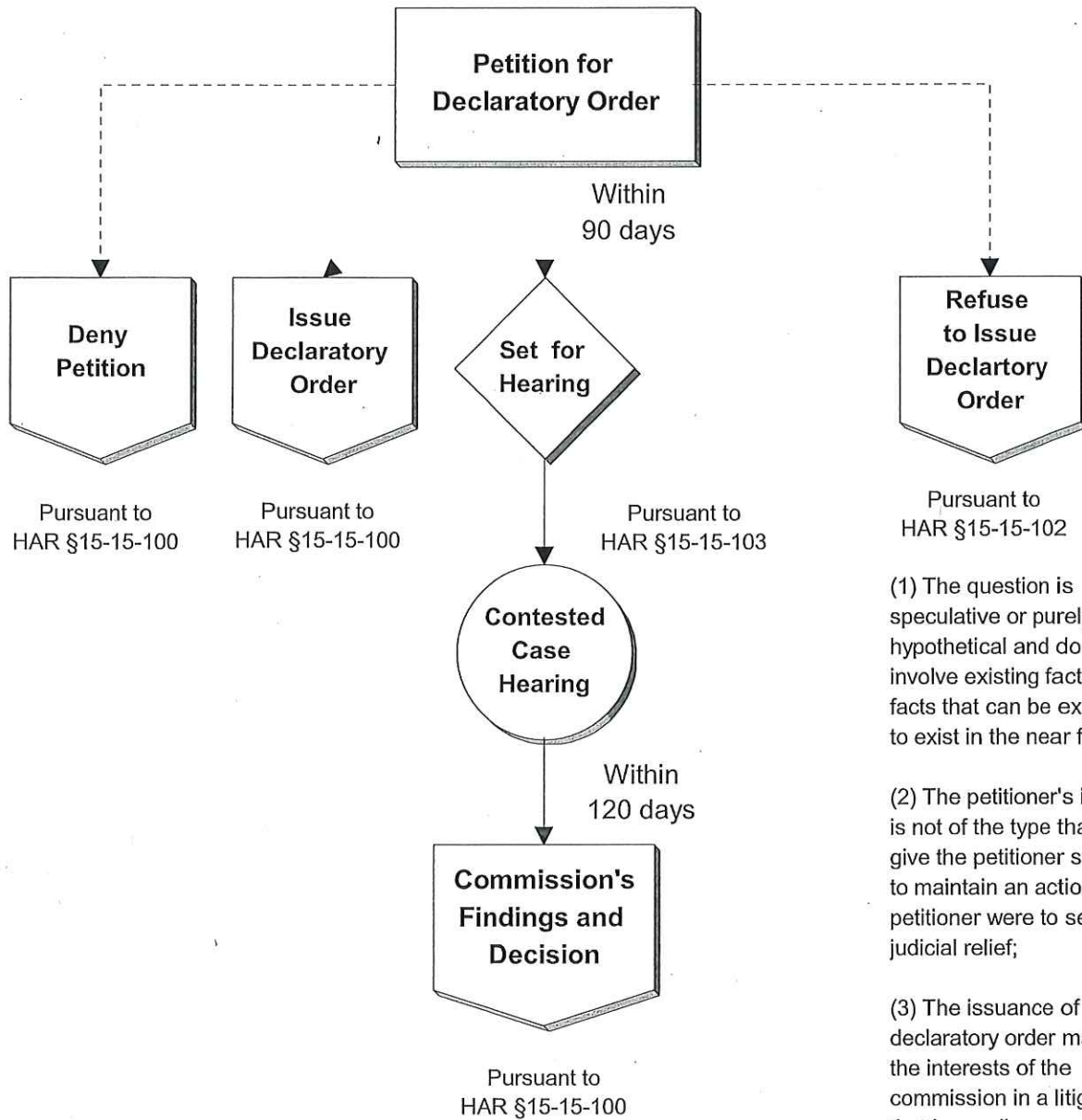


Declaratory Orders Flowchart



(1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;

(2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;

(3) The issuance of the declaratory order may affect the interests of the commission in a litigation that is pending or may reasonably be expected to arise; or

(4) The matter is not within the jurisdiction of the commission.

Declaratory Rulings

Hawai'i Revised Statutes

§91-8 Declaratory rulings by agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders. [L 1961, c 103, §8; Supp, §6C-8; HRS §91-8]

Case Notes

Hawaii public employment relations board was empowered to make declaratory ruling regarding whether violation of collective bargaining agreement is a prohibited practice. 60 H. 436, 591 P.2d 113.

Where an agency employee's only interest in obtaining a declaratory ruling from that agency stems from his or her work as an agency employee, that interest is insufficient to satisfy this section's standing requirements; where executive director's interest in filing the petition stemmed from the director's work as executive director, the Hawaii civil rights commission did not have jurisdiction to issue a declaratory order on the petition. 104 H. 158, 86 P.3d 449.

Orders disposing of petitions for declaratory rulings under this section are appealable to the circuit court pursuant to §91-14; thus, circuit court had proper jurisdiction to review Hawaii labor relations board order. 107 H. 178, 111 P.3d 587.

Hawai'i Administrative Rules

DECLARATORY ORDERS

§15-15-98 Who may petition. (a) On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission.

(b) Notwithstanding the other provisions of this subchapter, the commission, on its own motion or upon request but without notice of hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 10/27/86; comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-99 Petition for declaratory order; form and contents. The petition shall conform to the requirements of subchapters 5 and 7 and shall contain:

- (1) The name, address, and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
- (4) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (5) A statement of the petitioner's position or contention; and
- (6) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. [Eff 10/27/86; comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-100 Declaratory orders; commission action. Within ninety (90) days after the receipt of a petition for declaratory order, the commission shall either deny the petition in writing, stating the reasons for the denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 15-15-103 provided that if the matter is set for hearing, the commission shall render its findings and decision within one hundred twenty days (120) after the close of the hearing. [Eff 10/27/86; am and comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-101 Declaratory orders; dismissal of petition. The commission, without notice or hearing, may dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter. [Eff 10/27/86; am and comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-102 Refusal to issue declaratory order. The commission, for good cause, may refuse to issue a declaratory order by giving specific reasons for the determination. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may affect the interests of the commission in a litigation that is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the commission. [Eff 10/27/86; comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-103 Declaratory orders; request for hearing. The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order. Any petitioner or party in interest who desires a hearing on a petition for a declaratory order shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and to the extent that the request for a hearing is dependent upon factual assertion, shall accompany the request by affidavit establishing those facts. In the event a hearing is ordered by the commission, subchapter 7 shall govern the proceeding. [Eff 10/27/86; am and comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-104 Applicability of declaratory order. An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. [Eff 10/27/86; am and comp 8/16/97; comp May 08 2000] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)