

Declaratory Rulings

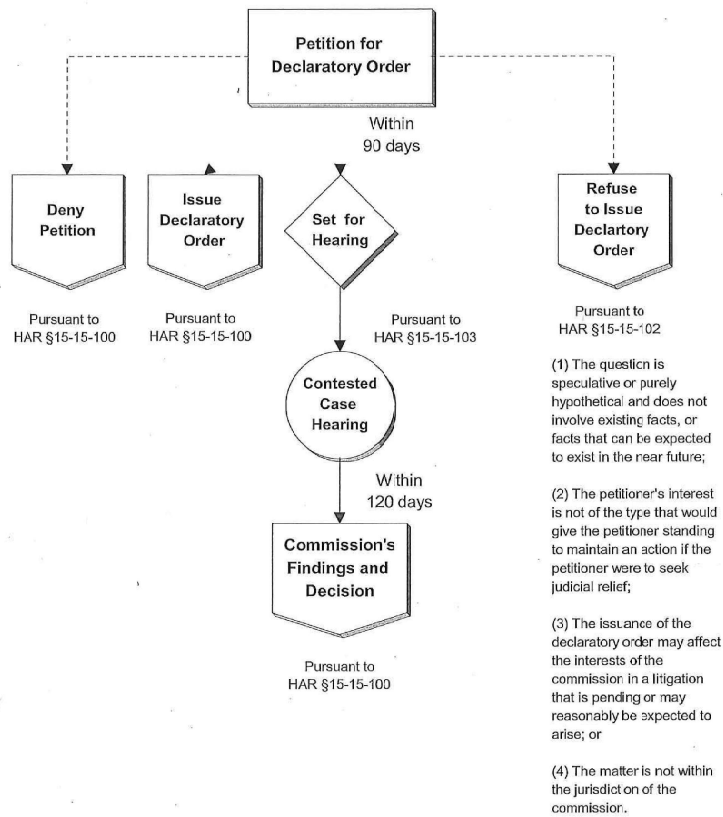


Declaratory Rulings

- Infrequent
- Where there is uncertainty as to how to interpret something (statute, rule or order) the LUC can issue an opinion as to what it believes the answer is ("to terminate controversy or to remove uncertainty")
- Briefs by interested parties are filed and there is oral argument.
- LUC can affirm, deny or schedule for further hearing based on the pleadings and oral argument.
 - Not usually an evidentiary hearing
- Usually limited to a distinct set of factual circumstances.



Declaratory Orders Flowchart



Subchapter 14 (15-15-98 to 104)

15-15-98 - "On petition of any 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 to a specific factual situation."

The Commission can issue an order on its own motion to remove uncertainty.



Options of the Commission (90 day timeframe) 15-15-100

- Reject the petition
- Issue a declaratory order on the matter
- Set the matter for hearing



Grounds for Rejection

The question is speculative, hypothetical or not likely to occur

The petitioner lacks standing (legal criteria)

The issuance of the order will adversely affect the State or the commission in a pending or likely litigation

The matter is outside the commissions jurisdiction or refers to a statute outside of chapter 205.

Note: Must be distinguished from actual resolution of the issue. These are grounds for not reaching for question. If the question is reached, you can still find against the Petitioner based on your analysis of the issue. Confusion comes from how Petitioner's present their requests.

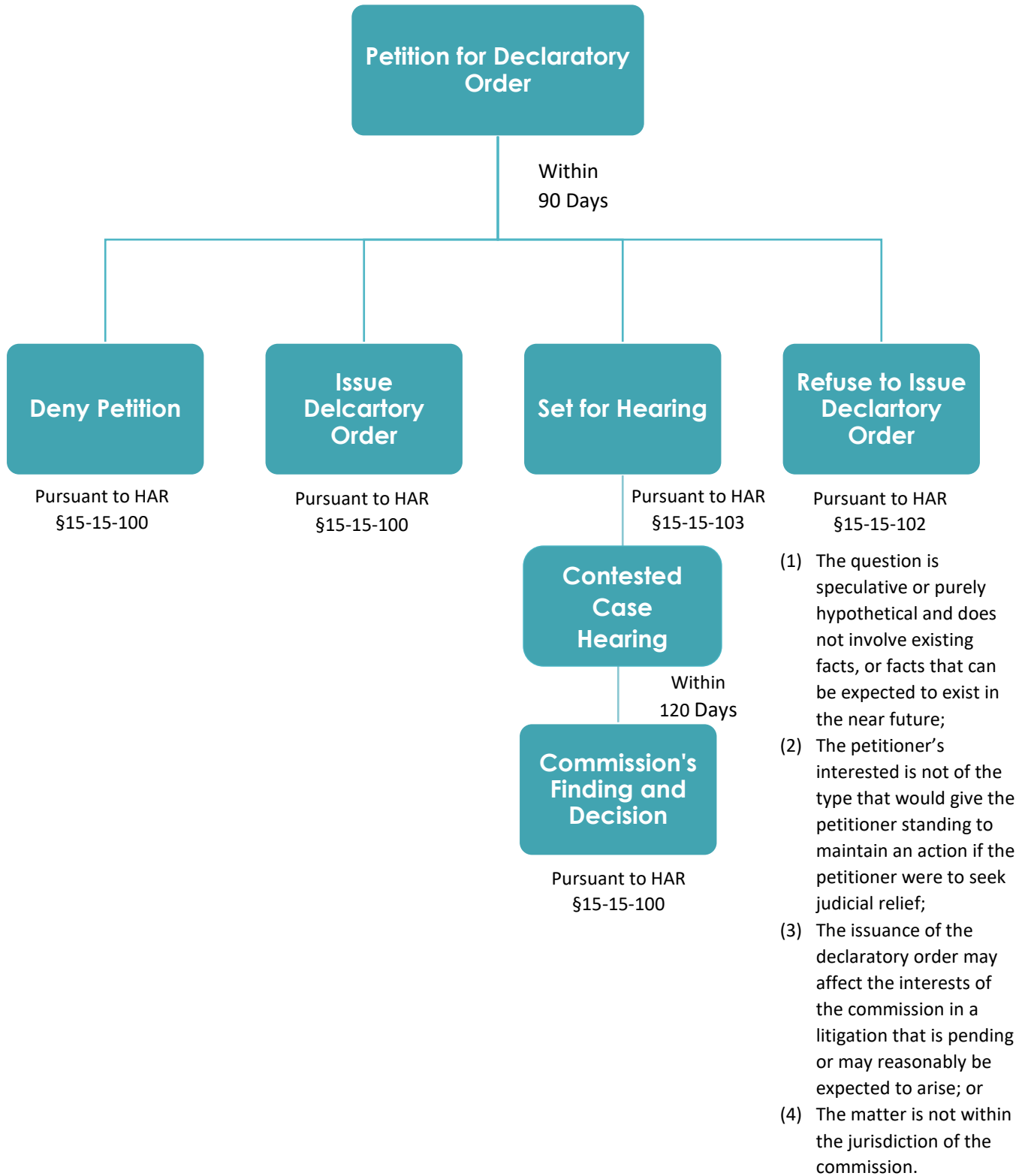
Scheduling a Hearing

A hearing may be scheduled by decision of the commission or upon request by a party upon a proper showing or motion.

If a hearing is ordered or requested the commission must render a decision within 120 days of the hearing or within 45 days of the filing of the final brief.

There is flexibility in this regard and the commission may set different time constraints at hearing.

DECLARATORY ORDERS FLOWCHART



DECLARATORY RULINGS (“DR”)

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.

As both the title and the pertinent text make clear, the declaratory ruling procedure of this section is meant to provide a means of seeking a determination of whether and in what way some statute, agency rule, or order, applies to the factual situation raised by an interested person; it was not intended to allow review of concrete agency decisions for which other means of review are available. 114 H. 184, 159 P.3d 143.

Where insurance commissioner's decision was appealable pursuant to §91-14 because it was an order disposing of a petition brought pursuant to this section, and plaintiff was a "person aggrieved" by the commissioner's decision because it faced increased competition from allegedly improperly licensed competitors in the managed care plan contract process, and the decision held that plaintiff's competitors were in fact properly licensed to offer the services required under those contracts, plaintiff had standing to appeal the insurance commissioner's decision. 126 H. 326, 271 P.3d 621.



DECLARATORY RULINGS (“DR”)

Hawai'i Administrative Rules

§15-15-98 Who may petition.

- (a) On petition of any 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 to a specific factual situation.
- (b) A farmer or landowner with lands qualifying under section 205-45, HRS, may file a petition for declaratory order to designate the lands as important agricultural lands and shall file a petition that conforms to the requirements of this section and section 205-44 and 205-45, HRS.
- (c) 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.

§15-15-99 Petition for declaratory order; form and contents. The petition shall be submitted consisting of one original, one paper copy, and one electronic copy, and shall conform to the format requirements of sections 15-15-38, 15-15-39, and 15-15-40, and shall contain:

- (1) The name, address including zip code, and telephone number of each petitioner;
- (2) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved;
- (4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto;
- (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda;
- (6) The names of any other potential parties;
- (7) The signature of each petitioner; and
- (8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so the docket number and identification of all parties to the docket.

§15-15-100 Consideration of petition for declaratory order. (a) The commission, within ninety days after submission of a petition for declaratory order, shall:

- (1) Deny the petition where:
 - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future; or



- (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or
 - (C) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or
 - (D) The petitioner requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission; or
- (2) Issue a declaratory order on the matters contained in the petition; or
 - (3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.
 - (4) If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing or, if post hearing briefs are filed, forty- five days after the last brief is filed, unless a different time period is stated at the hearing.

§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. The dismissal shall be in writing and state the reasons therefor.

§15-15-102 REPEALED. [R 11/2/2013]

§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.

§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. It shall not be applicable to different fact situations or where additional facts 15-109 J) 3 51 §15-15-104 not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission.

15-15-104.1 Fees. The Petitioner shall be responsible for fees pursuant to section 15-15-45.1 herein.